United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 102d CONGRESS, SECOND SESSION

SENATE—*Thursday, March 5, 1992*

(Legislative day of Thursday, January 30, 1992)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Senate Chaplain, the Reverend Dr. Richard C. Halverson.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *the love of money is the root of all evil* * * *.—I Timothy 6:10.

Eternal God, perfect in truth, justice and righteousness, this is a hard saying by the Apostle Paul, but its reality is being confirmed in our time. We have watched greed infect our culture, ravage the financial world and threaten the economy. The destructiveness of this evil is immeasurable, and we desperately need healing and a change of priorities.

Jesus said, "No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon."—Matthew 6:24. How easily we worship mammon, the Semitic word for money, rather than God. How easily money replaces God in our lives and reminds us that the bottom crisis is spiritual, the deepest need is a return to God and transcendent reality.

Patient Father in Heaven, help us comprehend this truth and grant to us the grace to repent of our secular preoccupation with materialism and turn to the living God for restoration and renewal.

In the name of Jesus, the Great Physician. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of the proceedings has been approved to date?

The PRESIDENT pro tempore. The Senator is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, there will be a period for morning business until 11:30 a.m., during which Senators will be permitted to speak.

At 11:30, the Senate will return to the consideration of the conference report on the Omnibus Crime Control Act. We began discussion of that matter yesterday. I am deeply disappointed that our Republican colleagues have decided to engage in a filibuster to prevent the Senate from voting on that important crime control legislation.

There has been a lot of political rhetoric about the need to act on crime. The conference report is the result of a bill that has been approved in both the House and Senate. The report itself, the joining of those two bills, was approved by the House, and all that remains to send that bill to the President is for the Senate to approve it.

Were the Senate to do so, as I hope it will, police officers would receive a great deal of assistance. Law enforcement agencies all across the country would be strengthened. Americans would feel more secure against the threat of violence in their daily lives.

I regret very much that our Republican colleagues, as they did last year, have resorted to the tactic of the filibuster to even prevent the Senate from voting on this important measure.

We will continue today. It is my hope that our colleagues will reverse their position, once they understand the importance of action on crime control legislation and at least permit the Senate to vote. If they choose to vote against the crime control legislation, that is, of course, the privilege of any Senator.

But I think it is unfortunate that a bill, which could be on the President's desk tomorrow, the President could sign it and help reduce crime in our society, assist law enforcement agencies, help police in the difficult dangerous tasks they undertake, is being quartered by a minority of Senators. It is clear that a majority of the Senate favors this bill. A minority is preventing the Senate from even voting on the measure, which I think is most unfortunate, given the importance of the matter and all of the political rhetoric on the subject.

Mr. President, we will just continue, and at some point, if our colleagues persist in the filibuster, we will have to try to get the votes to terminate that filibuster and proceed to approve the measure.

We will be back on that at 11:30, and I understand that our colleagues will be present to debate, as I have advised the Republican leader. Obviously, our colleagues have a right under the rules to engage in a filibuster. But if no Senator is present for debate, the question will be put, and our colleagues are on notice of that fact. So they will be required to be present and debate the subject.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time, and I reserve all of the leader time of the distinguished Republican leader.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the order, there will now be a period for the transaction of morning business with Senators permitted to speak therein for not to exceed 5 minutes each.

Also under the order, the following Senators are to be recognized: the Senator from Iowa [Mr. GRASSLEY] is recognized for 20 minutes; the Senator from Mississippi [Mr. LOTT] is to be recognized for up to 20 minutes; the Senator from Michigan [Mr. LEVIN] is to be recognized for up to 10 minutes;

• This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

and the Senator from Wyoming [Mr. SIMPSON] will be recognized for up to 5 minutes.

Does the Senator from Iowa seek recognition now that he might take advantage of this order?

PRIVILEGE OF THE FLOOR

Mr. GRASSLEY. Mr. President, I do. I ask unanimous consent that a legislative fellow by the name of Neil Hardman who worked on this subject with me be permitted to be on the floor during my remarks.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

WASTE IN THE MEDICARE PROGRAM

Mr. GRASSLEY. Mr. President, I rise today to call attention to a specific example of the continuing problem that we have in combating waste, fraud, and abuse, which occurs across the spectrum of Federal Government programs.

Mr. President, this waste of taxpayers' much-needed money is both widespread and egregious and, of course, it must come to an end, one program at a time. It is a little bit like, how do you eat 10,000 marshmallows? Obviously, you eat them one at a time.

Today, I would like to focus on one of these programs: on the vast waste in the Medicare Payment Safeguard Program, and it is the focus of a GAO report released February 21 of this year.

I have been concerned about waste in the Medicare Program for obvious reasons, and the GAO Report No. 92–52 entitled "Medicare: Over $1 Billion Should Be Recovered From Primary Health Insurers," does an excellent job of pinpointing serious waste which is occurring and occurring right this very minute.

Mr. President, I ask that a copy of that GAO Report No. 92–52 be printed in the RECORD at the the end of my comments.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRASSLEY. Before I get into that report, I want to take a moment to thank Senator BENTSEN, the distinguished chairman of the Finance Committee, and Senator PACKWOOD, the ranking member of that committee, for requesting this excellent report.

I look forward to working with these Senators and the rest of the Finance Committee members on a just solution to a very serious problem of not recovering money owed to the Federal Government.

GAO has reported on this problem in the past and later I will talk about some of their previous findings. However their current report very succinctly states the size and scope of the problem and points out the obvious solution.

Mr. President, in order to have a better appreciation for the report's findings, first let me take a moment to explain Medicare payment safeguards and how they work; second, I want to talk about how and why the waste is occurring; and third, I want to talk about the legislation which I will soon introduce to address the problem.

As a matter of routine business, Medicare contractors perform payment safeguard activities which are designed to identify and recover trust fund dollars that are inappropriately paid out on Medicare claims.

These mistakes stem from paying claims where private insurers have primary responsibility, clerical errors, and paying claims which are not authorized. Of course, these safeguards are also designed to root out fraudulent and abusive claims submitted by unscrupulous providers.

Contractor payment safeguard efforts are very much an integral part of normal claims processing and comprise three activities:

First, reviewing all Medicare claims to determine whether the services furnished were medically necessary and appropriate;

Second, auditing cost reports submitted by providers such as home health care agencies and hospitals providing outpatient services, that are reimbursed on a cost basis; and

Third, assuring that Medicare pays beneficiaries' claims only after other responsible insurers have paid what they owe. This is known as the Medicare Secondary Payer Program [MSP], enacted in 1980. The current GAO report focuses on waste in the Medicare Secondary Payer Program.

Mr. President, herein lies the problem that I am addressing this morning. Safeguard funds have been cut from about $358 million in 1989 to about $335 million for 1992. Now, if funding had kept pace with the 11-percent growth in the Medicare Program, the safeguard budget would be $500 million instead of $335 million.

Because safeguard activities are extremely cost effective—returning a high of $30 for every $1 spent in the Medicare Secondary Payer Program to an average of $11 for every $1 spent on combined activities—these cuts have had a profound and compounded effect on program savings.

Mr. President, I want to emphasize I am not talking about spending more money just for the sake of spending more money. I am talking about $1 of taxpayers' money being spent that can return $30 of money that is otherwise being lost to the Federal Treasury.

In fact, GAO found that Medicare contractors have backlogs of claims mistakenly paid totalling over $1 billion. This is $1 billion that should be in the Federal Treasury. In addition to the confirmed backlogs, contractors had reported over 1.1 million beneficiaries who had other insurance.

GAO estimates that when these additional 1.1 million claims are researched an additional $1 billion could be owed to the Medicare trust fund by primary insurers.

Mr. President, this means that over $2 billion owed to Medicare may never be collected because contractors lack adequate resources to recover this money.

A further irony in this situation is that Congress in 1989 strengthened the Health Care Financing Administration's [HCFA's] ability to identify beneficiaries who have other insurance by authorizing data matches between the IRS and Medicare records. Congress did so anticipating additional Medicare savings of $1.6 billion over the next 3 fiscal years.

Unfortunately, at the same time, contractors began sustaining significant budget cuts which will in many instances prevent them from following up on these new leads, as well as leads from other sources.

GAO concludes that this data match could add several million more claims to the existing backlog of mistaken Medicare payments. Mr. President, this could mean that billions of additional dollars are potentially owed to Medicare and given the resource limitations, contractors have little hope of ever recovering this money.

Mr. President, the fiscal year 1992 HHS budget simply will not permit contractors to significantly reduce these backlogs. This budget of $334 million is below fiscal year 1989 levels when claims volume was 27-percent less and it is 22-percent less than what the contractors requested.

In fact, fiscal year 1992 budget cuts have forced contractors to reduce their staffing levels by over 1,000 full-time positions. Of the 451 positions lost in the Medicare part A area, 41 percent were in provider audit units, an important payment safeguard area.

Of the 698 positions lost in the Medicare part B area, 30 percent were in medical utilization and review and Medicare secondary payer units. These forced reductions cannot help but limit efforts to recover money owed to Medicare and of course that is not even the whole story.

The fact is, these are highly trained and knowledgeable people who are being terminated—people who are not so easy to replace. Provider auditors take up to 2 years to train before they are able to begin returning money to the Medicare Program.

Worse yet, it is a well known fact that when these highly trained payment safeguard folks are let go by contractors, they jump the fence and they earn more money by advising hospitals and other providers on how to maximize their reimbursements from the

taxpayers or more directly from the Medicare trust fund.

They even take out ads in provider trade journals to publicize their unique skills in this area to help get more of the taxpayers' money. They are so confident, Mr. President, of their ability to increase reimbursements to providers that in many cases they work on a commission basis.

This serious situation cannot be allowed to stand. Contractors must be given more stability to help them carry out their responsibilities more effectively.

This is a penny-wise and pound-foolish budget policy which is costing the taxpayers billions of dollars. With rates of return as high as $30 to $1 it just does not make sense to not fund Medicare payment safeguards.

Furthermore, untold dollars owed to Medicare may be lost because of an HHS regulation which limits the time a contractor has to initiate recovery of a mistaken claim after it identifies the primary insurer. The regulation limits recovery to between 15 and 27 months depending on when the mistaken claim is identified.

Mr. President, I plan to ask the Health Care Financing Administration [HCFA] if trust fund dollars have been lost or are expected to be lost because of this regulation. Here and now I would simply ask HCFA to reexamine the wisdom of a regulation which holds such potentially dire consequences for the taxpayers money.

Mr. President, just to insure an understanding of exactly how budget cuts translate into the waste that is occurring in the Medicare Secondary Payer Program, I would like to cite some specific examples from a previous GAO report.

GAO's findings are based on Medicare contractor field studies—and their findings are very disconcerting.

One contractor had over a 3,000-case backlog where Medicare mistakenly paid about $8.8 million for services to beneficiaries who had private insurance. Because of staffing constraints, the contractor was able to do little to recover the payments.

For one beneficiary alone, GAO identified 153 claims totaling $42,000 which were most likely the responsibility of a private insurer. Again, staffing constraints hampered recovery.

Because of budget cutbacks, HCFA raised the threshold for claims development for a Florida carrier from $50 to $250. This meant that any claim less than $250 was automatically paid without even trying to determine if the beneficiary had private insurance. Claims totaling $34 million were automatically paid while the HCFA directive was in effect. One can only imagine the losses which may have occurred here.

The examples of GAO's findings are too numerous to mention although I believe that those I cited demonstrate effectively why billions of dollars are being wasted each and every year.

As a result of their field audits, GAO recommends strengthening management and fully funding safeguard activities to prevent these substantial losses to the trust funds. The HHS Inspector General has also called attention to this dilemma and has recommended that funding levels and management initiatives be increased.

How in the world can we justify to the American people siphoning off dollars from an activity that produces such a tremendous return on investment? Especially in this case, when it amounts to throwing away the taxpayers' hard earned dollar. It simply cannot be justified because it is just flat out irresponsible.

At least Congress had the wisdom to exempt IRS enforcement activities from any cuts stipulated by the budget agreement. With regard to the Veterans' Administration, a self-sustaining revolving fund was created to identify and recover third party payments similar to those owed in the Medicare Secondary Payer Program.

However, as big as it is and with so much money at stake, Medicare safeguard activities have been left out in the cold in terms of sustained funding, never mind being compensated for growth due to inflation and more importantly, the substantial annual growth in claims workload.

Mr. President, this simply cannot be allowed to continue, especially when you consider the consequences for what has been happening since the cuts began.

I think it is clear that we must correct this funding-related anomaly which results in a waste of the taxpayers' money.

It is also clear that the Health Care Financing Administration needs to take a more hands-on approach in implementing new and effective management controls to seriously reduce the number of claims payment errors.

That is to say, HCFA, and the contractors need to do their level best to end this "pay and chase" scenario by achieving better payment accuracy. The taxpayers money would be much better spent in other areas instead of being used to chase after mistakes.

However, until that day comes—and believe me it must come—we must provide the necessary funding to recover these huge sums of money. It is simply inconceivable to continue our present policy of allowing this waste to continue.

In addition, HCFA and the contractors need to collaborate to design a better management information system to track and report on the status of claims errors. Currently contractors accumulate and report to HCFA monthly data regarding program savings realized under certain provisions.

These monthly reports include cost avoided and cost recovered savings, however they do not include data on inventories of claims errors which have been identified but not recovered.

HCFA must begin to collect this information immediately so as to have a better accounting of funds outstanding at any given time.

Quite frankly Mr. President, I wonder about the sum of money outstanding over the past several years which has not, and may never be, identified.

HCFA and the Medicare contractors must first work hard to obtain an accurate accounting of outstanding Medicare trust fund dollars and begin recovery efforts. Then they must work even harder to curtail payment errors in the future.

Mr. President, I have studied this problem carefully and, in the interest of progress, I have talked with the administration, GAO, Medicare contractors, the Congressional Budget Office, and several committees.

As a result of these discussions, I hope to be back on the floor very soon to introduce a bill which will provide a mechanism to effectively address the substantial waste and payment errors which occur annually in the Medicare Program.

It is essential that we recover the large sums of money owed to the Medicare Program and that we take the necessary steps to end the practice of pay and chase in the Medicare Secondary Payer Program.

In this age of information it just does not seem reasonable for Medicare to blindly pay a claim and maybe or maybe not find out that the individual has private health insurance and maybe or maybe not be able to recover the money if he does.

Personally, I am interested in exploring the idea of a third-party liability clearing house whereby the Secretary would establish and maintain a database on Medicare beneficiaries who also have private group health coverage either through their employment or that of a spouse.

This information could be reported to HHS on a regular basis by employers, insurers, States and Federal entities. With this database knowledge Medicare could deny claims where private insurers have primary responsibility instead of mistakenly paying them and hoping they catch and recover the error.

It stands to reason that the more the management side of this equation is improved, such as with a clearing house to reduce payment errors, the less we will have to spend in future years on recovery efforts. And that, Mr. President, should make everyone happy, especially this Senator from Iowa.

Mr. President, for all of the reasons I have cited, I would encourage my colleagues to read GAO Report No. 92-52

and urge them to support my forthcoming bill so that we may help to preserve and protect the Medicare trust funds in an effective, efficient manner.

I yield the floor.

EXHIBIT 1

[U.S. General Accounting Office]

MEDICARE: OVER $1 BILLION SHOULD BE RECOVERED FROM PRIMARY HEALTH INSURERS

(Report to the Committee on Finance, U.S. Senate, February 1991)

GENERAL ACCOUNTING OFFICE,
HUMAN RESOURCES DIVISION,
Washington, DC, February 21, 1991.

B-241122.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate.
Hon. BOB PACKWOOD,
Ranking Minority Member, Committee on Finance, U.S. Senate.

In this report, we respond to your request that we review Medicare contractors' efforts to administer provisions of the Medicare secondary payer (MSP) program. These provisions are intended to make certain that insurers whose coverage is primary pay claims before Medicare. Contractors are responsible for (1) making certain that health providers identify and bill primary insurers, thereby preventing mistaken Medicare payments, and (2) identifying and recovering mistaken payments made before contractors confirmed a beneficiary had other insurance.

We previously reported that contractors were ineffective in identifying primary insurers and avoiding mistaken Medicare payments. We, therefore, recommended actions to improve identification of primary insurers.[1] In this report, we identify contractors' backlogs of mistaken payments and review the effect of recent budget reductions on contractors' efforts, after confirming that beneficiaries have other insurance, to recover these payments from primary insurers.

We did our work relating to budget cuts at three carriers—in Arizona, California, and Nevada—that pay Medicare part B claims for physician, outpatient, laboratory, and certain other medical and health services. At two of these carriers, we determined the extent to which Medicare carriers were recovering mistaken payments by taking random samples of beneficiaries with other insurance.

After we completed our field work at the three carriers, the Health Care Financing Administration (HCFA) surveyed Medicare contractors to determine MSP backlogs. We have included the survey results—which provide nationwide information on unrecovered mistaken payments owed to Medicare—in this report. (See app. I for a more detailed discussion of our objectives, scope, and methodology.)

RESULTS IN BRIEF

Many Medicare contractors have significant backlogs of mistaken payments for Medicare beneficiaries that are unrecovered from primary health insurers. Responding to a HCFA survey, Medicare contractors recently reported backlogs of over $1 billion in beneficiary claims that they confirmed were mistakenly paid.

In addition to the confirmed backlogs, contractors had reported over 1.1 million beneficiaries who had other insurance. However, the contractors had not yet researched previously paid beneficiary claims to determine what amounts Medicare paid that primary insurers should have paid. Our work suggests that once these claims are researched, an additional $1 billion or more in mistaken payments could be owed by primary insurers.

HCFA has recently initiated an effort that will identify additional primary insurers and could add several million more claims to the existing backlogs of mistaken Medicare payments. Furthermore, millions of dollars that primary insurers owe Medicare may be lost because of a Department of Health and Human Services (HHS) regulation. The regulation limits the time a contractor has to initiate recovery action on a claim after it identifies a primary insurer.

Collections of MSP mistaken payments far exceed carriers' cost of recovery. Nevertheless, Medicare contractors advised HCFA that inadequate MSP funding is the reason for the backlogs of mistaken payments. The fiscal year 1992 HHS budget will not permit contractors to significantly reduce the existing backlogs. This budget is (1) below the fiscal year 1989 funding levels, when claims volume was about 27 percent less and contractors did not have huge MSP backlogs, and (2) about 22 percent less than the Medicare contractors requested.

BACKGROUND

Medicare helps pay medical costs for about 35 million aged and disabled persons under a two-part system: part A, which covers inpatient hospital services, home health services, and various other institutional services; and part B, which covers physician, outpatient hospital, and other health services, such as diagnostic tests. HCFA, as part of HHS, administers the Medicare program and is responsible for establishing policy, developing operating guidelines, and ensuring compliance with Medicare legislation. HCFA operates the program with assistance from insurance companies that it contracts with to process and pay claims for covered services. The insurance companies—called intermediaries under part A and carriers under part B—are expected to pay Medicare benefits totaling about $127 billion in fiscal year 1992. The volume of Medicare claims has increased by about 11 percent annually and is expected to exceed 650 million in fiscal year 1992.

In enacting the Medicare program in 1965, the Congress made Medicare the secondary payer for beneficiaries covered by both Medicare and workers' compensation. The Congress made several statutory changes during the 1980s that also made Medicare the secondary payer to certain employer-sponsored group health insurance plans and to automobile and other liability insurance plans. These changes are commonly referred to as the MSP provisions.

Medicare contractors rely on health care providers to obtain data on beneficiaries' health insurance coverage and to identify insurers who should pay before Medicare. The contractors should take two actions after learning that a beneficiary has other insurance. First, contractors should enter a "flag" in their claims-processing system so that Medicare will deny future claims and send them to the beneficiary's insurer. Second, contractors should research the beneficiary's claims history file to determine if Medicare has paid claims after the other insurance went into effect and, if so, attempt recovery.

CONTRACTOR'S MSP BACKLOGS EXCEED $1 BILLION

In April 1991, HCFA instructed contractors to develop a system to identify and report, on a quarterly basis, the number and dollar amount of mistaken payments that were unrecovered because of the lack of funds. Prior to that time, HCFA did not regularly collect or require contractors to identify and report mistaken payments that were owed by primary insurers.[2] Initial contractor reports on backlogs were due by June 1, 1991.

Judging from the first two quarterly reports, contractors have significant backlogs of mistaken payments that should be recovered from primary insurers. In the first report about 50 percent of the contractors identified backlogs of about $990 million. Carriers reported over $179 million in backlogs intermediaries reported over $811 million.[3] The remaining contractors did not provide information on backlogs.

HCFA's analysis of the contractors' reports showed that many contained missing or inaccurate data. For example, some contractors failed to submit complete reports or did not specify the dollar amounts of identified MSP claims. As a result, in late July 1991, HCFA instructed its regional offices to reexamine contractor reports for missing data.

Medicare contractors' second quarterly reports showed backlogs of about $1.14 billion, or about $150 million more than was initially reported. Carriers reported about $155 million in backlogs and intermediaries over $984 million. HCFA found that overall these reports were more accurate than the first ones. About 36 percent of the contractors did not provide information on backlogs.

In addition to the confirmed MSP backlogs, 70 percent of the contractors advised NCFA that they had identified over 1.1 million additional beneficiaries who had other insurance.[4] However, the contractors had not researched these beneficiaries' claims, paid before the contractors confirmed other insurance, to determine amounts paid by Medicare that may be the responsibility of primary insurers. Considering that the average Medicare payment for services provided to enrollees is about $2,800, contractors may have paid more than $1 billion in Medicare claims that are potentially recoverable from primary insurers.

Our work at two carriers shows the magnitude of the problem. At Aetna of Phoenix and Transamerica Occidental of Southern California, we took random samples of 423 beneficiaries who were identified as having other insurance. We found that the carriers had paid one or more claims, totaling $192,161, for 150 of the 423 beneficiaries, before identifying a primary insurer. On the basis of these samples, we estimate that these two carriers made about $36 million in mistaken payments for more than 26,000 Medicare beneficiaries.

HCFA DATA MATCH MAY ADD MILLIONS OF CLAIMS TO MSP BACKLOGS

HCFA has recently initiated a data match that uses Internal Revenue Service (IRS) and Social Security Administration records. Required by the Omnibus Budget Reconciliation Acts of 1989 and 1990, this data match identifies a beneficiary or a spouse with health coverage through an employer-spon-

[1] Medicare: More Hospital Costs Should Be Paid by Other Insurers (GAO/HRD-87-43, Jan. 29, 1987), and Medicare: Incentives Needed to Assure Private Insurers Pay Before Medicare (GAO/HRD-89-19, Nov. 29, 1988).

[2] Medicare: Millions in Potential Recoveries Not Being Sought by Contractors (GAO/T-HRD-91-8, Feb. 26, 1991), presented before the Subcommittee on Oversight, House Committee on Ways and Means.

[3] We reported previously on contractor problems in recovering mistaken payments. Medicare: Millions in Potential Recoveries Not Being Sought by Maryland Contractor (GAO/HRD-91-32, Jan. 25, 1991).

[4] Thirty percent of the contractors did not provide information on beneficiaries who had other insurance.

sored group health plan.[5] HCFA indicated that identifying spouses with health insurance has been difficult. It believes these spouses make up the largest category of undiscovered MSP savings.

After beneficiary insurance information is obtained, it will be entered into Medicare's automated claims-processing system to prevent Medicare from mistakenly paying MSP claims. In addition, HCFA will use this information to determine prior mistaken payments. HCFA will give Medicare contractors lists of mistaken payments that should be investigated and, if appropriate, recovered from primary insurers. The data match will help identify additional primary insurers. It could add millions of mistaken payments to the already large backlog.

LIMITED TIME REMAINING FOR RECOVERING MANY MISTAKEN PAYMENTS

Effective November 13, 1989, HHS regulations limit the time Medicare contractors have for initiating recovery of MSP mistaken payment, including those that will be identified by the HCFA data match. These regulations provide, in effect, that once a mistaken payment has been identified, Medicare contractors must inform the primary insurer of its payment responsibilities within 15 to 27 months depending on when in the calendar year the mistaken payment is identified. For example, Medicare contractors had until December 31, 1991, to inform primary insurers that they owe the program about $420 million in mistaken payments that Medicare contractors identified between November 13, 1989, and September 30, 1990. If timely notification has not been given, Medicare will be unable to recover the mistaken payments.

MSP BUDGET REDUCTIONS HAMPER CARRIER COLLECTION OF MISTAKEN PAYMENTS

Nationwide, part B funding for MSP activities was reduced from $38.3 million in fiscal year 1989 to $15.2 million in 1990, a 60-percent reduction. Part B MSP budgets remained about the same in fiscal year 1991. Budget reductions caused HCFA to raise the carriers' dollar threshold for reviewing claims to confirm that another insurer was the primary payer. The threshold went from $50 to $250. Thus, claims of less than $250 were paid without confirming if the beneficiary had other insurance coverage. In addition, HCFA informed carriers in October 1989 that the recovery of mistaken payments would be a low-priority activity, to be conducted as funding permitted. However, carriers were expected to make sure that Medicare did not pay for beneficiaries who had other insurance.

For the carriers we visited, the effect of budget reductions were evident. They were not recovering identified mistaken payments between late October 1989, when their MSP budgets were cut, and March 1991, when we completed our field work. We observed many claims related to the mistaken payments stored in boxes or filing cabinets. In fiscal year 1990, MSP budgets declined and remained below fiscal year 1989 levels. For example, the carriers we visited had MSP budget reductions of 35 to 59 percent.

The three carriers had to make significant MSP staff reductions because of the reduced funding. The MSP full-time staffs were reduced from a combined fiscal year 1989 level of 84.6 to a fiscal year 1990 level of 32.5.

The most severe reduction was made at Blue Shield of California, which went from 33.3 full-time staff to 7. Further, a 1990 review by the HHS Office of Inspector General found that seven carriers had reduced MSP full-time staff from 127 in fiscal year 1989 to 48 in fiscal year 1990. As a result, five of the carriers discontinued MSP recovery activities.[6] HCFA realized the effect of the reduced MSP funding early in fiscal year 1991, when many carriers informed HCFA regional offices that they could not process backlogged MSP cases at current funding levels. Any unanticipated increase in claims, HCFA said, would make the backlogs even greater. HCFA provided about $3.9 million to Medicare contractors in fiscal year 1991 so that they could notify primary insurers about the $240 million in mistaken payments by the December 31, 1991, deadline (see p. 5).

The carriers we visited received additional MSP funding and began efforts to recover mistaken payments during the summer of 1991. Additional fiscal year 1992 funds are needed, they stated, to continue these efforts. However, the HCFA fiscal year 1992 MSP budget is $70 million, or about $20 million less than Medicare contractors requested for MSP activities.[7] The 1992 budget, which includes about $2.9 million for the recovery of mistaken payments, is about $8.0 million below the MSP funding levels in fiscal year 1989. During that time claims volume was about 27 percent less and contractors were not faced with huge MSP backlogs.

BUDGET PROCESS CONSTRAINS CARRIER FUNDING

The Budget Enforcement Act of 1990 imposed new constraints on federal funding. In general, this law provides that federal discretionary spending, which includes Medicare contractor expenditures, be subject to spending limits. Medicare contractor savings achieved through payment safeguard activities, such as MSP, do not count as offsets to any increased spending for additional recoveries.[8] Thus, increased spending for these activities, including MSP recoveries, would require cuts in other federal programs to remain within the established budgetary limits.

The Congress resolved a similar problem, funding IRS enforcement activities, by permitting additional funding for enforcement activities without cutting spending elsewhere. The law provides for discretionary spending limits to be increased if additional appropriations are made for IRS compliance spending. Consistent with the act, the anticipated effect of this budgeting mechanism was to authorize increased expenditures for specific activities likely to produce a reduction in federal spending.

Several times previously, we reported and testified on the need for adequate funding of contractor MSP activities and other payment safeguards that help ensure the accuracy of Medicare payments. In our February 1991 testimony, we said that the proposed fiscal year 1992 funding was insufficient to address the carrier's backlogs of mistaken payments—estimated at about $200 million.

The Health Insurance Association of America, whose membership includes several Medicare contractors, shared our concerns. The association stated that the lack of adequate MSP funding has prevented Medicare contractors from recovering annually hundreds of million of dollars in mistaken payments.[9] Intermediaries and carriers do not have the staff, the association added, to cope with the work load, and HCFA's overall contractor budget is so tight that reallocating sufficient funds from other essential activities to strengthen the MSP effort is impossible.

We previously suggested that the Congress consider establishing a mechanism, similar to that applicable to IRS funding, to facilitate adequate funding of Medicare program safeguard activities.[10]

Additional MSP funding is an appropriate investment that will enable Medicare contractors to recover over $1 billion in mistaken Medicare payments. For example, our work at two carriers shows that collections of mistaken MSP payments far exceeds the carriers' cost of recovery. On the basis of our cost-benefit analysis, we estimate that for every dollar spent, Transamerica Occidental can recover $8.65 and Aetna Life and Casualty can recover $14.65.

CONTRACTORS COULD USE CONTINGENCY FUNDS TO RECOVER MISTAKEN PAYMENTS

While contractors lack the necessary funds to recover mistaken payments, another part of the Medicare budget has grown significantly over the past several years. Historically, an increasing part of the budget has been set aside in a contingency fund to cover unanticipated administrative expenses. The fund, as a line item in the HCFA budget, has grown from $20 million, or 2 percent of the fiscal year 1985 contractor budget, to $257 million, or 15 percent of the 1992 budget.

HCFA monitors contractor expenditures and work loads throughout the year and requests the release of contingency funds. Such requests and the supporting justifications go through HHS and must ultimately be approved by the Office of Management and Budget (OMB). Unused contingency funds are not carried over from year to year.

Contingency funds have been used for unanticipated increases in work load or operating costs. For example, early in fiscal year 1991, HCFA requested that OMB release $101.3 million to fund increases in claims work load and legislatively mandated activities. Included in HCFA's request was $3.1 million for Medicare contractors to process backlogged mistaken payments. Such funds, HCFA estimated, would result in the recovery of about $50 million. During February 1991, OMB released $75 million. However, by reallocating funds within the contractor budget, a HCFA official said, the additional MSP funding was provided and contingency funds were not released.

CONCLUSIONS

In the last decade, the Congress has made several changes to the MSP program. These changes have been made to help reduce Medicare costs by making certain insurers the primary payers for beneficiary services. However, amounts owed by other health insurers are unrecoverd or, in many cases, unidentified even after Medicare contractors have confirmed that beneficiaries have other health insurance that provides primary coverage. Nationwide, large backlogs of mistaken payments remain unrecovered.

[5] The 1990 act extended the data match program from September 1991 through September 1995.

[6] Office of Inspector General, HHS, testimony presented before the Subcommittee on Oversight, House Committee on Ways and Means (Feb. 26, 1991).

[7] The budget includes $6.6 million for Group Health Incorporated to obtain beneficiary insurance information for the HCFA data match project.

[8] Contractors are required to perform other safeguard activities, including a review of all claims to determine medical necessity and appropriateness and the audit of providers' cost reports that are reimbursed on a cost basis.

[9] Mistaken and Unrecovered Medicare Payments, statement presented to the House of Representatives, Committee on Ways and Means, Subcommittee on Oversight.

[10] Medicare: Further Changes Needed to Reduce Program and Beneficiary Costs (GAO/HRD-91-67, May 15, 1991).

Significant program savings are not being realized because contractors do not have the funds they need to recover MSP mistaken payments. The fiscal year 1992 MSP funding levels are below the amounts provided in fiscal year 1989, yet the number of beneficiary claims is significantly higher, and large backlogs remain. Increase funding of MSP activities is essential if over $1 billion in mistaken payments are to be recovered.

One way to increase MSP funding would be for the Congress to amend the Budget Enforcement Act. The Congress, in debating the need for increased contractor funding, could consider establishing a mechanism to facilitate increased funding of Medicare payment safeguard activities, particularly the recovery of MSP mistaken payments. This recovery would be of substantial benefit to the government.

An alternate solution to the funding problem would be for HCFA to request and for OMB to release a portion of the contingency funds contained in the 1992 budget. Contractors could use these funds to begin recovering amounts owed to Medicare primary insurers.

RECOMMENDATION

We recommend that the Secretary of HHS direct the Administrator of HCFA to initiate a request to OMB to release the necessary contingency funds for use in recovering mistaken payments owed to Medicare.

We do not obtain written agency comments on this report. We did, however, discuss its contents with HCFA officials who agreed with the report's findings and conclusions. We incorporated their comments where appropriate.

We are sending copies of this report to the Secretary of HHS; the Administrator of HCFA; interested congressional committees and subcommittees; the Director, OMB; and other interested parties. Copies will also be made available to others on request.

Please call me on (202) 512-7119 if you or your staffs have any questions concerning this report. Other major contributors are listed in appendix II.

JANET L. SHIKLES,
Director, Health Financing and Policy Issues.

APPENDIX I: OBJECTIVES, SCOPE, AND METHODOLOGY

Our review was directed at MSP activities under the Medicare part B program. It was begun because of a nationwide 60-percent funding reduction in fiscal year 1990. Our objectives were to determine (1) if significant backlogs of unrecovered mistaken MSP payments existed and (2) the effect of the budget cuts on carriers' efforts to recover Medicare mistaken payments after learning that Medicare was not the primary insurer. Our work was carried out at (1) Aetna Life and Casualty Company, a carrier serving Arizona and Nevada; (2) Blue Shield of California, the carrier for Northern California; and (3) Transamerica Occidental Life Insurance Company, the carrier for Southern California.

At all three carriers, we (1) reviewed MSP funding and staff allocations before and after the budget reductions and (2) determined the carrier efforts to identify and recover mistaken MSP payments. We also discussed resource issues with carrier officials, as well as HCFA headquarters and regional staff. We reviewed MSP legislation and HCFA guidance relating to carrier MSP activities.

Using contractor computerized files, we estimated the backlogs of unrecovered mistaken payments at Aetna Life and Casualty Company and Transamerica Occidental Life Insurance Company. We selected random samples of 423 beneficiaries who were identified as having other insurance. We determined the effective date of the beneficiary's primary insurance and reviewed Medicare payment history files (from Jan. 1, 1987, to Sept. 1, 1990) to identify potential mistaken payments made while the other insurance was in effect. Based on our samples, we estimate that these two carriers had about $36 million in unrecovered mistaken payments.[11] These results were discussed with carrier representatives. Where appropriate, we incorporated their comments.

In addition, we developed models to estimate the cost to recover mistaken payments made by Transamerica Occidental and Aetna Life and Casualty. For these carriers, we identified recovery activities (such as researching a beneficiary's claims history, preparing refund requests, processing refunds, or withholding payment on future claims in the amount of the mistaken payment); the time required to complete each activity; and the associated staff costs for each activity. In addition, direct and overhead costs were calculated. We also calculated a cost-benefit ratio for each carrier, based on HCFA estimates that 75 percent of mistaken payments are recoverable. Each carrier reviewed and commented on the costs associated with identification and recovery of mistaken payments. Their comments were considered in our estimates.

After we completed our work at the carriers, HCFA surveyed Medicare contractors to determine unrecovered mistaken payments. We included the survey results in this report but did not review the reporting requirements or assess how each contractor determined its reported backlogs. We did our work between August 1990 and May 1991 in accordance with generally accepted government auditing standards.

APPENDIX II: MAJOR CONTRIBUTORS TO THIS REPORT

Human Resources Division, Washington, D.C.: Susan D. Kladiva, Assistant Director, (202) 512-7106; Alfred R. Schnupp, Assignment Manager.

San Francisco Regional Office: Thomas P. Monahan, Health Issue Area Manager; Randolph D. Jones, Evaluator-in-Charge; Brad C. Dobbins, Evaluator; Dylan A. Jones, Evaluator.

[11] At the 95-percent confidence level, we estimate the unrecovered mistaken payments to be between $22.7 and $51.7 million.

The PRESIDENT pro tempore. The Senator from North Carolina [Mr. SANFORD] is recognized for not to exceed 5 minutes.

DEBT COVERUP

Mr. SANFORD. Mr. President, I want to commend the Washington Post of last week for bringing attention to the confusion about the Federal budget deficit, suggesting that it has become, in their words, a "cosmic mystery," and I quite agree. There were so many different deficit numbers in President Bush's fiscal year 1993 budget proposal that even budget experts had trouble understanding what they meant and where they fit.

It seems to me the best reason for listing so many different deficit numbers—the only reason, the only explanation—is to confuse the people and cover up the honest deficit, which is the annual increase in the Federal debt. The President does not want the public to know how bad things are. Nowhere in the President's 1,713-page budget proposal, weighing more than 6 pounds, was the honest deficit number that could easily be understood—even by children—which reflects the amount that will be spent and must be borrowed, the amount that will be added to the Federal debt in fiscal year 1993. That is an easy, straightforward, honest deficit number for everyone to understand, but that number is nowhere to be found in the President's budget.

Why is it important to have honest deficit numbers that reflect what is added to the Federal debt each year? The President's fiscal year 1993 budget proposal estimates that the Federal debt, subject to the limit at the end of fiscal year 1992, will be $4.053 trillion. This information is found on page 289 of the President's budget.

Using a little math, these numbers show that the President estimates that $464 billion is the true deficit. That is the figure that will be added to the Federal debt in fiscal year 1993, and no wonder he does not want the public to know about it.

And yet in all that array of pages of his budget, the President's deficits do not reflect that. His smallest deficit number, defined in some gobbledygook, is $62 billion, and his largest deficit number, reported in clear figures, is $352 billion. Yet his budget will add $464 billion to the debt this coming year, more than $100 billion above what he claims will be the deficit, and that is hidden from the public.

Honest budget deficits are important because the public deserves to know how much the Federal debt is growing each year. Gramm-Rudman, no matter how well-intended in its conception, turned out to mislead the public into believing that Federal deficits were getting smaller when they were not. The coverup, the misuse of trust fund surpluses was getting larger, and so was the debt. The deficits were not coming down. The coverup was building up.

It is time for the President to report honest annual deficits in his budget proposals. S. 101 requires honest deficit reporting. Taxpaying families want to know the honest deficits, not gobbledygook.

Mr. President, how much time do I have left?

The PRESIDENT pro tempore. The Senator has 40 seconds remaining.

Mr. SANFORD. Mr. President, I ask unanimous consent that I be allowed an additional 2 minutes to make an additional speech.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, the Senator is recognized for 2 minutes and 40 seconds.

DOUBLE TALK AND NATIONAL DEBT

Mr. SANFORD. Mr. President, my colleague from North Carolina [Mr. HELMS] has come to the floor with great fanfare to point out the size of our national debt. While I agree with his concern and have fought to have this revealed now for years, and I agree with the implications of this debt, his statements ignore any discussion of how we got into such an unenviable position. As my colleagues surely know, the President presents the budget to the Congress. In the past 12 years, no President has submitted a balanced budget.

The historical tables tell us that the cumulative deficits of Presidents Reagan and Bush from the 1982 budget to the President's proposed 1993 budget, including the 6-year period when the Republican Party controlled the U.S. Senate, have exceeded $3 trillion, more than 300 percent in excess of the debt at the expiration of the Carter administration.

It is true, as my colleague almost pointed out, that the Republican Senate voted for half of these deficit budgets and the Democratic majority voted for six of them, but neither could do much about cutting the deficit sent over by Presidents Reagan and Bush. They did, however, Mr. President, make some cuts. The tables clearly show that over this period, the two Presidents requested more than Congress voted to spend, and that fact ought to be known by the public.

One of the hallmarks of these Reagan and Bush budgets is deceit and coverup, when the reserves of Social Security have been wrongly spent and deceitfully reported.

Mr. President, the Reagan and Bush administrations cannot escape primary responsibility for the massive debt with which our children and grandchildren have been burdened. I thank the Chair and yield the floor.

The PRESIDENT pro tempore. What is the desire of the Senate?

Mr. SANFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The point of no quorum having been made, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Mississippi [Mr. LOTT] is recognized under the order for up to 20 minutes.

Mr. LOTT. Mr. President, I am here today, because I believe we have a tremendous problem which demands our attention now. Our budget system is a farce. There is a saying in this city that we quite often use, "If it ain't broke, don't fix it." But in this case I think our system is broke, and we need to do something about it.

I have introduced legislation, S. 2317, the Budget Process Reform Act, that I believe will go a long way toward overhauling the process and putting some teeth back into it. In 1974, I voted for the Budget Impoundment Act, because I thought we needed some process, some system of adding up the numbers, we needed some teeth in it to try to control spending. I am not sure it ever really had any teeth, but over the years it has been ground down, and basically we are just gumming the process now. So we want to put some teeth back into it. The American public is tired of Congress' fiscal irresponsibility. My constituents and people from all around the country, tell me time and time again the Congress must get the Federal budget deficit under control. The blank check policy has to stop.

To avoid getting enveloped in an omnibus solution, one that would make an already musclebound system even more complicated, I think we should focus separately on the two fundamental components of the budget. The first is the process for development and implementation of a budget, and the second is the actual determination of the taxing and spending levels within that budget.

The Congressional Budget and Impoundment Act of 1974 was intended to place all taxing and spending decisions within the overall context of a budget resolution. The resolution was to be adopted prior to consideration of spending or revenue bills. Although the intentions were good, the process has not worked.

The bill I have introduced this week, S. 2317, identical to H.R. 298 introduced in the House by my friend Congressman CHRIS COX who has done a lot of outstanding work in this area and has already been joined by over 130 cosponsors in the House from both parties. The bill addresses the first component, or the process. Everyone agrees that the present procedure by which Congress is empowered to allocate our vast revenues is impossibly Byzantine, a maze randomly constructed which is stonewalling our ability to govern properly. It is a bureaucratic, extralegal system whose complexity and incomprehensibility shield it from effective scrutiny. The byproduct is an exorbitant Federal budget deficit which has become the fundamental source of America's economic problems.

But that does not mean we should remain hostage to this inefficient, haphazard budget process. We must not throw our hands into the air and do nothing because there are few Senators standing in line to cut specific Federal programs or because decisions are too painful. It is a time for change, and that requires wiping the slate clean. People are demanding a complete refocus, not simply a tinkering with the cogs of the current machinery.

This bill seeks to replace the broken down Congressional budget process in a simplistic, and efficient, businesslike manner. This law will provide an enforcement mechanism with legally binding timetables for adopting spending legislation.

With this budget reform in place, we can then effectively administer the second component of budgeting, the resource allocation process, where and how much do we spend of the taxpayers' money. We will have a structure designed to permit clear, rational, and accountable choices among competing priorities.

This reform is based on accountability and orderliness, the current lack of both have been duly noted by the American public. It ensures that neither Congress or the public is deceived; that last minute authorizations and appropriations are not just stuck inside fiscal legislation, and more importantly, that there is an ironclad agreement in advance on a total budget dollar figure to force Congress to live within its means, much like the rest of America.

The bill has six key provisions:

First, budget first, spend second. No authorization or appropriation bills can be considered until the budget is approved.

Now, authorization committee members, and certainly Appropriations Committee members, would say we cannot wait around on the budget process all year. And quite often the budget is not approved when it is supposed to be. But this bill will address that problem. Budget first and spend second.

Second, a 1-page, 19-function binding budget resolution, a legally binding joint resolution to be enacted by April 15, focusing the budget decisions at a macro level—just the big numbers. Do not get into the line items of the budget. And that is what has been happening over the years. The Budget Committee is encroaching on authorization and appropriations justifiable responsibility. We ought agree on the totals for 19 main budget functional categories. This would simplify the process and make the budget document one that lay men and women could understand.

Third, meet budget guidelines. A super majority will be needed to exceed spending ceilings set annually by the Congress. This will force Congress to spend only what they plan. Accountability becomes clear at this point.

Fourth, enhanced rescission. The President would have the authority to rescind spending proposals exceeding the budget ceilings as scored by the Congressional Budget Office.

It is important to note that there is a safeguard to prevent Congress from holding critically important programs which would easily get a two-thirds

vote until late in the process: Deficit spending in any category would subject all spending legislation in that category to a two-thirds vote.

Fifth, pay-as-you-go supplement. Proposed spending increases must have offsets.

Sixth, no baseline budgets. Start budgets with hard, actual numbers, not the current service level, or the prior year's numbers adjusted for inflation.

This is the only place in the world that begins the budgeting process by saying OK, we are going to take last year's number, we are going to add certain other considerations, increase the number of people, adjust for inflation, and we will begin from that point. In other words, we increase the budget right at the start, and then we say well we may roll it back a percent or two and therefore we have cut the amount of spending increase. It makes no sense in the real world.

I believe in this legislation because it requires action early in the process: It does get the President involved. It is done in a macroway without getting into the details that really should be handled by the authorization and appropriations committees.

These proposed procedural changes would have the following effects:

First, early consultation between the administration and Congress;

Second, binding overall budget levels early in the planning process;

Third, give both the President and Congress a voice in establishing spending priorities;

Fourth, tie individual spending to overall budget totals;

Fifth, require explicit decisions on spending beyond agreed levels;

Sixth, provide a clear, understandable process;

Seventh, avoid difficult questions of constitutionality;

Eighth, allow for a bias toward fiscal responsibility, unless Congress and the President choose otherwise; and

Ninth, place the burden for fiscally responsible—but politically difficult—votes on the process, rather than the Members.

This would help eliminate the pork in Federal spending. Projects would be evaluated on their merits, not on their ability to acquire votes.

As we annually translate our Nation's priorities into a Federal budget, we can use this new process to both plan and discipline our spending while still achieving our goals. The final result is a meaningful budget which allows Congress to focus on the effects of the bottom line on the economy and on the tradeoffs which must be made among priorities to control overall levels of spending.

Budget process reform is long overdue. We now have the largest budget deficit in history, wasteful Government spending, and uncontrolled entitlement expenditures. Failure to produce a responsible balanced budget is the result largely of budget process which no longer meets our needs.

I urge my colleagues to seriously consider the Budget Process Reform Act to avoid future carnivals of chaos.

We have now 17 cosponsors of the bill in the Senate. We are hoping it is going to be seriously considered this year in a bipartisan way. I think it will be. I think we should focus on how we can improve the process. If we do not, there is going to be a move to just throw it out altogether and have no Budget Committee or budget process. I think that would be the height of irresponsibility. Let us see if we cannot simplify it and make it work. I urge my colleagues in the Senate to consider this legislation.

Mr. President, so that others can speak who are waiting, I would now like to yield 5 minutes to the distinguished Senator from Iowa.

The PRESIDENT pro tempore. The Senator from Iowa [Mr. GRASSLEY] is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, I wish to join my colleague, the Senator from Mississippi [Mr. LOTT], in his call to action with respect to the Federal budget process.

This institution, once deeply respected and widely thought to house some of our Nation's greatest minds, has developed a serious credibility problem.

The American people have lost all faith in our ability to act responsibly with the Nation's purse, and frankly, given the exploits of this body and our colleagues on the other side of the Capitol, they have good reason to doubt us.

Week after week, month after month, and year after year, we have made new rules, changed old rules, circumvented other rules, and broken all of the rules.

So while I admit to some degree of mixed emotion in suggesting that we further revise a process we have largely come to ignore, this proposal appeals to me because it strips away layers of political cover and forces us to work with real numbers and real time frames.

It addresses the whole process, from the budget resolution, through baseline development, the appropriations process, each step up through the White House.

Mr. President, as budget deficits begin to top $400 billion and the national debt reaches the $4 trillion mark, we have reached a defining moment for the U.S. Senate and for the Nation.

Will we continue to accept business as usual, or will we stand up to the challenge?

A month ago, President Bush challenged Congress to adopt an economic growth package, and between the two houses we have come up with nothing but political documents which are destined for vetoes.

A week ago, Senator MCCAIN came to the floor with a proposal to give the President line-item, veto-like authority, but we balked at that opportunity as well.

The Senate Budget Committee is charged with the duty of developing a budget resolution before the end of this month, and so far we have not even begun to address that responsibility.

In baseball, three strikes means you are out, and the Democrats in this body have seen three good pitches pass by without even bothering to take the bat off their shoulders.

My fellow colleagues, our spring training is over, and it is time to be more aggressive.

If we are serious about winning this budget game, we need to let someone step up to the plate who will take a few swings at the process, and I along with Senator LOTT and the other cosponsors of this legislation are prepared to do just that.

Let's play ball.

Mr. LOTT. Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator from Mississippi has 11 minutes remaining.

Mr. LOTT. Mr. President, I yield 5 minutes to the distinguished Senator from Colorado.

The PRESIDENT pro tempore. The Senator from Colorado [Mr. BROWN] is recognized for 5 minutes.

Mr. BROWN. I thank the Chair. I thank the distinguished Senator from Mississippi for his leadership in budget reform. It is very clear to every American that this Nation needs to reexamine the way we have handled the Nation's budget.

Mr. President, a simple example. I have been in this Chamber and that of the House of Representatives for 11 years now. In the last decade, every single year we have cut defense spending. That has been the rhetoric from both the House and the Senate, and it has been used on the public. And yet the public is shocked to find that even though we have cut defense spending every year, defense spending has doubled, or more than doubled, in the last 10 years. How do you do that?

Well, it takes some creativity, and that is exactly what our budget process has in it. One might also call it fraud. The simple fact is that we set up an artificial, false base on which to make comparisons. Yes, we can claim defense spending cuts every year and double it within 10 years. But that is not honest and the American people know it.

First of all, if we are going to change the budget process, we ought to be honest, and that means that we abandon the current services-based budget and simply make references to the past based on what it was, not on some phony nonsensical comparison. So when we say we are increasing or decreasing the budget from year to year,

it ought to mean just that, that we are changing it up or down, not an artificial, phony budget.

So the first principle of this budget bill is truth in budgeting. Second, we ought to live by the budget. Every American understands it. The simple fact is that we have not in the last 10 years had a single year where we have kept spending within the budget.

I am not here to hurl stones. Every Member of this body is subject to pressures, but this Congress ignores its budget. This Budget Act is realistic. It says if we pass a budget we are going to live by it. To exceed the budget would require a two-thirds vote in the Chamber. I believe we will come up with the discipline to make the budget process work if this budget bill passes.

Third, in the past we put pressure on Congress by having appropriations simply stop, Social Security checks do not go out, and the defense of our country crumbles if we did not pass a new appropriations bill. This resulted in a lot of appropriations that simply did not conform with the budget or did not, even worse, comply with any Budget Act at all.

What this bill says is you will not fall off a cliff, if you do not act with regard to appropriations. This bill would provide automatic continuing appropriations at last year's level.

In other words, we do not close down hospitals, or jeopardize our defense, or eliminate Social Security checks, but we do keep the pressure on Congress to act.

Mr. President, this bill introduced by Senator LOTT, is truth in budgeting. It will work. It will help bring things under control. Most importantly, Mr. President, I think it will restore the confidence of the American people in this body.

Mr. LOTT. Mr. President, I would like to ask the Senator from Colorado if he would remain for a moment and involve himself in a little dialog with me.

There are those that might say, you are trying to force the President into this process where he really does not belong. I would challenge anybody to think back and see if you can remember the last time a President's budget passed the Congress. And yet there were speeches made here in the Senate even this morning that said, oh, "the President caused the deficits." The President's budgets never go anywhere; the President is not involved until there is some summit where 17 or so people get in the room and tell the rest of the world where we are going to spend money.

In a final analysis, to quote the chairman of the Appropriations Committee, "it is the appropriations committees, and the budget committees, and the leadership that make the decisions about where money is spent."

Why, regardless of the party, would you want the President involved earlier in this process? Does the Senator have a response?

Mr. BROWN. The Congress is the one that appropriates the money. Not a penny is spent without the initiative of Congress and those items passed by Congress.

But I for one think it is important to involve the President in this process early. He also is involved in signing or vetoing those appropriation bills.

It is important to avoid the last-minute summits out at Andrews Air Force Base. I do not know of a single Member of this body that is pleased with those midnight sessions out there that have come up with distorted budget practices in the last few years.

This bill is a way to make democracy work, not simply to resort to summits out at Andrews.

Mr. LOTT. I certainly share that feeling. There are others who are going to say: "Why are you just tampering with the process?" I would remind them that we did not have a process at all until we passed the bill in 1974, and it has been changed several times, including of course the Gramm-Rudman-Hollings change that had some impact for a while.

I think that in a bipartisan way there are a lot of Senators and Members of the House that would like to see this process improved. And I think it should be done now.

I think we are reaching a point of frustration that is going to force some action.

What does the Senator think about that as a member of the Budget Committee?

Mr. BROWN. The Senator hits the nail on the head. Having served on both budget committees of the House and Senate, I for one think the record speaks clearly for itself. The deficit this year is $3,700 for every man, woman, and child in this country. The simple fact is our plans have not worked.

Second, I think the item that is noticeable is that every budget plan we have passed in the last decade has not been met; has not followed the guidelines. We have exceeded spending in every one of them. There is no question that the current process is broken. It does not work. It does not satisfy the needs of the American people. If we do nothing else, we ought to have a budget process the American people can at least regard as honest.

Mr. LOTT. Senator, it is said, and perhaps it is true in your State, although I do not think it is in mine, that people are not really interested in the budget process, that it is some arcane, inside Congress thing. What they really want is more spending on projects in their districts or States, or they want tax increases or tax cuts, depending on your point of view, and that this budget process is just sort of a side issue nobody really cares about.

Well, I can only remember one instance in my State where somebody said: Increase taxes. Occasionally, I have people say they would like some tax relief, in certain areas, for instance capital gains; but, most of the time I have people ask me: "When are you people going to get your act together on the budget and on deficit spending? It is going to come home to roost one of these days." They know it, but we do not seem to know it.

Mr. BROWN. I must say the people of Colorado are not unlike the people of Mississippi. Whether Democrat or Republican they expect us to change this and get it in order.

I think the experience that former Senator Tsongas is having on the campaign trail for President, some of his success is in part a reflection of the fact that he has brought in to the debate an inspired feeling that he is not talking turkey; that he is being straight with them.

My belief is the American people are way ahead of Congress on this issue. They are willing to face up to hard choices. They are tired of the baloney.

Mr. LOTT. There is one other important point, which I did not touch on in my earlier comments about the Budget Process Reform Act. This bill would also prevent actual or threatened annual shutdowns of the Federal Government; there would be no sequester. Instead, there would be a process in place to allow an automatic reversion to the level of funding for the previous year until the new appropriations bill is passed. The spending could not exceed the functional ceiling established in the budget resolution for that fiscal year without a two-thirds vote. We would no longer have to go through these processes where we have a short-term, CR, continuing resolution, 30 days, or two weeks or whatever. It would be automatic so that people in the Government would know what to expect until the next bill was passed.

Mr. BROWN. I must say I think this aspect of it is one of the better provisions of the Senator's bill. Legislators are faced with the choice of either voting for a bill that is bad, or facing an elimination of all Government services, including defense, excluding the periods of national emergency, and the elimination of mailing Social Security checks. And faced with that fall off the cliff, in effect many legislators in these bodies have voted for appropriations bills that they knew were bad but were better than the alternative.

This reform measure the Senator has introduced makes sure that kind of midnight emergency legislating does not happen.

Mr. LOTT. I thank the Senator from Colorado for joining me this morning. I again urge colleagues to consider this proposal.

I am willing to consider changes and improvements, and I think we will

have some additional consideration and some dialog here on the floor of the Senate as the year goes along in this particular area. We need to have budget process reform. We need it now to avoid future carnivals of chaos that we see year after year in the budgeting process.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 50 seconds.

Mr. LOTT. I yield my time.

Mr. LEVIN addressed the Chair.

The PRESIDENT pro tempore. The Senator from Michigan is recognized.

EXTENSION OF MORNING BUSINESS

Mr. LEVIN. Mr. President, I will need 10 minutes reserved, and I ask unanimous consent that morning business be extended for 8 minutes beyond 11:30 so that I may utilize that time.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The Senator from Michigan [Mr. LEVIN] is recognized for 10 minutes.

Mr. LEVIN. I thank the Chair.

TAX LEGISLATION

Mr. LEVIN. Mr. President, there are both encouraging and discouraging parts of the tax legislation just reported out by the Senate Finance Committee.

On the positive side, it is a much, much better bill than what was proposed by President Bush in his budget submitted in January. By increasing taxes on the wealthiest 1 percent of the population, the Finance Committee bill restores a measure of tax fairness that was so damaged during the 1980's. By not resorting to accounting gimmicks, the Finance Committee bill pays for itself and does it honestly. It does not put us any deeper into debt. That is the good news.

But, I am afraid that the Finance Committee misses an opportunity to help put our economic house in order, by not using a significant part of the revenues from the tax increase on the wealthy to reduce the horrendous structural budget deficit. The Congressional Budget Office [CBO] has recently reported that at the rate we are going, the budget deficit will still be more than $200 billion in 1997. According to CBO, deficits of that size will "cripple economic growth by reducing national savings and capital formation."

That means a less prosperous economy in the future, less investment by business, fewer houses built, fewer cars sold. In a word, fewer good paying jobs.

Deficit-neutral tax legislation like that reported out by the Finance Committee does not address these growth-threatening deficits. Just playing your opponent even when you are already far behind is not the way to win a ball game. It is also not the way to bring the deficit under control, when we are already at an annual minimum of $200 billion in the hole.

It is clear that the American public is concerned about tax fairness and wants us to get our economy moving and restore its long-term health. The tax proposal adopted by the Senate Finance Committee responds only partially. It recognizes that upwards of 80 percent of the American public wants to see the wealthiest 1 percent of the taxpayers, those who saw their income almost double during the 1980's, pay a fair share of the tax burden. But it is an illogical step to go from this essential element of tax fairness to the conclusion that the American public is pounding down the doors of Capitol Hill and asking us to use most of the new revenue from higher tax on the wealthy to pay for $400 tax cuts for middle-income taxpayers.

A poll conducted for the Wall Street Journal-NBC late last year has already shown that when it came to using the peace dividend, the strongest support is for additional spending on programs such as health and education, with deficit reduction second, and a tax cut in last place.

However, it is clear from the way the debate has developed in the intervening months that the most relevant immediate issue is how to use the revenue raised from increasing taxes on the wealthy; that the public wants us to answer that question by adopting middle-income tax cuts is an unarticulated major premise of the tax legislation approved by the Finance Committee.

Based on new information that I have just obtained, the premise is a false one. Here is how the American people, to a polling question asked by Opinion Research Corp. of Princeton, NJ, responded:

How should the revenue raised from increased taxes on people making more than $100,000 a year be used?

The answer to that question: 44 percent of the American people said increase spending on domestic needs, such as health and education; 27 percent said reduce the deficit; and only 22 percent said give a $400 tax cut to middle-class families.

This is a critically important point. Investing in our future and getting our economic house in order are higher priorities among the public than a tax cut.

That was a national poll of 1,000 people taken between February 27 and March 1.

Polls should not govern our actions. The longrun interests of a great nation that intends to stay great should be what guides our decisions on competing policy alternatives. But, at a minimum, we should avoid the folly of taking actions assuming they are popular if the public sentiment is in fact to the contrary.

We should act to help our immediate economic situation and to address our long-term economic health. We should not pass up that opportunity in exchange for a tax cut for about one-third of our middle-income families, a tax cut that is talked about far more within the Washington beltway than it is chosen as an economic remedy outside.

Mr. President, I ask unanimous consent at this point that the question we commissioned Opinion Research Corp. of Princeton, NJ, to ask nationally of 1,000 citizens, a cross-section of Americans, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTION

If taxes were raised on individuals with incomes of $100,000 or more, which of the following would be the best way for the government to use that additional money?

	Percent
Increase spending on domestic needs, such as health and education	44
Reduce the federal budget deficit	27
Give a $400 tax cut to middle class families	22
None of the above/Don't know	7

Conducted through CARAVAN national telephone omnibus survey of 1006 randomly selected adults 18 years of age and over during the period of February 27 through March 1, 1992.

Mr. LEVIN. Mr. President, I thank the Chair, and I yield the floor.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The point of no quorum having been made, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to speak as in morning business for 1 minute.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from Minnesota is recognized for up to 1 minute.

Mr. WELLSTONE. I thank the Chair.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2320 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by Congress stood at $3,830,561,049,317.97, as of the close of business on Tuesday, March 3, 1992.

As anybody familiar with the U.S. Constitution knows, no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000

just to pay the interest on spending approved by Congress—over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

DICK THIGPEN'S WISDOM

Mr. HELMS. Mr. President, I have a very special friend in North Carolina who has been an inspiration to me for at least four decades. His name is Richard E. Thigpen of Charlotte and he has been a leader in our State in business, civic, and religious affairs—and in common sense.

Being a graduate of what is now Duke University, Dick has played an enormous role in the growth of that fine institution. And, I might add, he is proud of Duke's No. 1 basketball team.

I have at hand a letter that Mr. Thigpen wrote on February 17 to the editor of the Wall Street Journal. As I read it, it occurred to me that Senators and others would find it of interest.

Therefore, Mr. President, I ask unanimous consent that the aforementioned letter be printed in the RECORD at the conclusion of my remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CHARLOTTE, NC,
February 17, 1992.

EDITOR,
The Wall Street Journal,
New York, NY.

DEAR SIR: "Selling Pessimism" is an apt heading for the review of "The Bankruptcy of America" on Page 14 of the Wall Street Journal on February 11, 1992. We need more optimism; we've recovered before and we will again. "We The People" can correct the angst that clouds the future.

Whether we call the mess we are in a recession or a depression, we cannot push aside the problems of crime, greed, waste and politics as business as usual. There is enough culpability for all. Band-aid measures will not cure the ills of the nation. Strong medicine is needed for survival.

Mr. Cobb ended with an apposite statement:

"So save your money and pay off debts. Teach your children morality. And join the local PTA."

The National Debt is now 3.6 Trillion Dollars on which the annual interest is 304 Billion Dollars. I do not recall any substantial payment on the National Debt since Andrew Mellon was Secretary of the Treasury.

Since our Declaration of Independence, we have coped with problems and moved on to the better life because the determined and dedicated people of the United States were willing to work and pay the price for freedom. "In God We Trust" is on our currency and coins; and "the eye of Providence" is on the Great Seal of the United States.

Many corporations and individuals have taken drastic measures to become more efficient and more profitable. The demands of good government for education, health, security and world peace must be met.

For too long we have tolerated the ever increasing burden of debt. We must act to cut the cost of debt service and provide more funds for essential government services. Congress and the Administration must cut the costs of government by 25 percent, must levy a gross income tax of 25 percent, must levy a surtax of 10 percent to reduce the National Debt.

All of us must do whatever is necessary to keep the United States "the land of the free" and not become the land of debt. We must get off the fast track to bankruptcy, and get back on the straight path to prosperity, security and freedom. We will then be able to enjoy the full life in the greatest nation and help less fortunate people at home and abroad.

Sincerely,

RICHARD E. THIGPEN.

AN END TO A CAMPAIGN

Mr. FORD. Mr. President, I witnessed a statement today that probably was one of the hardest to give these days in the life of my friend and our distinguished colleague, the junior Senator from Nebraska [Mr. KERREY]. Senator KERREY had, as he said, given it his best shot. He had a message that was beginning to grow and very little money to carry him through the costly campaign of running for President.

But in his remarks I think we could not only hear the desires of his people in Nebraska but we could grasp the feeling he had garnered in traveling across this great land of ours of the frustrations of the American people, of their desires, and hopes, and visions for the future.

I am not sure the country is better off because he had to drop out today. I think he had a message which needed to be given.

But I think the Senate may be a great deal better off because Senator KERREY is now back with us. He will bring to this Chamber that fire and that feeling he absorbed in campaigning among the American people. I think he will be able to express in no uncertain terms what he gleaned in his almost 6 months of campaigning throughout the country.

So I say to him, welcome back to the Senate. We look forward to working with him. We look forward to having his input in our decisionmaking process. We look forward to extracting from him what the people feel is in their best interests.

He said in his remarks this morning for us not to accept the frustration of the American people as bitterness but more of a desire to do better. As our main goal as a result of curtailing communism around the world, we dedicate ourselves to better education for our children, that they leave school with a desire to use what they have learned; that we find a way for health care to be given to all our people; that we dedicate ourselves from the military aspects, however keeping our country strong, to the manufacturing of products that will be the envy of the world, and people will want to buy from us, to stimulate the economy.

And, yes, he talked about the crime bill and crime on our streets.

So, Mr. President, I just wanted to take a few moments to say to our distinguished colleague that here is one Senator that thinks he did a good job, and he had a message. Here is one Senator who looks forward to working with him in our effort to be a stronger body, a better institution, as it relates to the welfare of this great land of ours.

So I thank my distinguished friend from Utah for giving me just a moment to say these things about a colleague that I say is a friend of mine and one who I respect and one whose voice I believe will be heard in the next few months in this Chamber.

I now yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I would like to add a couple of follow-on comments.

I welcome our distinguished colleague back as well. I commend him for being willing to throw his hat into the ring, being willing to go out there any try—and he did try—hard for those months. I have to say that I felt he was going to do much better than he did.

He is a very attractive personality with a lot of ability, and I think presented himself very, very well under the circumstances. I have to have respect for anybody who is willing to get in and do the best he can.

So I welcome him back as well.

I appreciate the remarks from the distinguished majority whip.

JUDGE ROGER WOLLMAN

Mr. PRESSLER. Mr. President, on March 4, 1992, the Senate received the President's nomination of Judge Roger L. Wollman of the U.S. Eighth Circuit Court of Appeals to serve on the U.S. Sentencing Commission. I commend the President for making this most outstanding nomination.

South Dakotans are very proud of Judge Wollman. We were proud of him when he served as Chief Justice of the South Dakota Supreme Court. We were even more proud when President Reagan elevated him to the U.S. Court of Appeals in 1985.

Judge Wollman was the first South Dakotan to serve on the Eighth Circuit Court of Appeals in 25 years. It was my honor to recommend Judge Wollman's appointment to the U.S. Court of Appeals, as well as the U.S. Sentencing Commission.

Mr. President, Judge Roger Wollman is one of the finest public servants in the Nation. He is a brilliant, intelligent man who has given great service

to the State of South Dakota and the people of the United States. A skilled and able jurist, Judge Wollman has been an inspiration to the legal profession.

Those who have the pleasure of knowing Judge Wollman, or who have appeared before him in court, often have remarked to me how fortunate we are to have Judge Wollman in public service. Blessed we would be if more people like Judge Wollman were willing to dedicate themselves to a career of public service.

Mr. President, I urge the Senate to confirm this nomination at the earliest opportunity. I ask unanimous consent that an article about Judge Wollman's nomination to the U.S. Sentencing Commission, which appeared in the March 4, 1992, edition of the Rapid City Journal, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JUDGE WOLLMAN NOMINATED

WASHINGTON.—President Bush has nominated Eighth Circuit Court of Appeals Judge Roger Wollman of South Dakota to the U.S. Sentencing Commission.

Wollman, who was recommended to the commission by Sen. Larry Pressler, R-S.D., will serve a six-year term if confirmed by the Senate. The commission was created by Congress in 1984 to establish sentencing policies and guidelines for the federal criminal justice system.

The commission's seven voting members are appointed by the president and confirmed by the Senate.

Wollman will continue to sit as one of 10 judges on the appeals court in St. Louis, Mo.

Pressler had recommended Wollman for the appeals court to then-President Ronald Reagan. Wollman was confirmed July 19, 1985, and is the first South Dakotan to serve on the court in 25 years.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business is closed.

OMNIBUS CRIME CONTROL ACT—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the order, the Senate will resume consideration of the conference report accompanying H.R. 3371. The clerk will report.

The legislative clerk read as follows:

The conference report to accompany H.R. 3371, an act to control and prevent crime.

The Senate resumed consideration of the conference report.

Mr. LOTT. Mr. President, I observe a quorum is not present.

The PRESIDENT pro tempore. The Chair will state that if no Senator seeks recognition, it is the duty of the Chair, under the rules, to state the question.

The Senator from Mississippi suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Mississippi [Mr. LOTT].

Mr. LOTT. Mr. President, I rise in opposition to the crime conference report. In many respects, I think it would be better labeled "criminal rights protection conference report." It is not all bad. Some features of it are good.

The point was made in the debate yesterday, how could you oppose this conference report because it does have so many new crimes that are included? It does have some good provisions in it.

But the point is, on the fundamentals, on the big questions, it is weak: In habeas corpus, exclusionary rule, and on the death penalty.

Mr. President, we talk about Supreme Court decisions, legal niceties, lawyer arguments that you hear in the debate here on the floor of the Senate. All that is necessary, and all that is fine. But the question is, What do the people out there in the real world think about crime in this country, and what is being done or what is not being done? Frankly, they are horrified. They think a lot more should be done.

They do not understand why local law enforcement people do not have more tools to do their job. They do not understand how, when they arrest people, they are back on the street the next day or the next week.

They do not understand how, when people are convicted of heinous crimes, or murder, that they go to prison, but because of Federal court decisions they do not go out and work on the highways and byways, like they used to do. They do not raise crops. In some instances, they are told that you cannot put more than one prisoner in a cell.

The American people do not understand all this coddling of prisoners that has been going on in America for the past 30 years. They think lawmakers are to blame. They think the laws are to blame. They think the courts are to blame. They blame the judges. And there is no question in my mind that for 25 or 30 years we have had permissive judges who interpreted the laws that we passed—perhaps correctly—but they seemed to be more worried about the criminal and the rights of the criminal than about the victim, or about society.

Before I came to this city several years ago I had the experience of being a public defender for a brief period of time in my hometown, my home county of Jackson County. Before that, I just basically had done some county court work in domestic relations. I really had not been in the criminal law. But when I got into it, defending those who were charged, I was shocked at how much of the burden of the law is on the prosecutor.

I found it was very easy for me to do my job as the public defender. And I looked at the DA almost in bemusement, because he had all these technical requirements that had been put on him and on law enforcement people. You have to do this. You have to meet this technicality. If you do not, the whole thing is thrown out; this was in 1967 and 1968. Let me tell you, it got worse after that.

The common man and woman does not want to blame anybody. They just want somebody to do something, whether it is the attorney general of the State, the Attorney General of the United States, or the Congress. This conference report does not do enough.

I have heard a lot of discussion back and forth about the niceties in the conference report, what is in it and what is not in it. I see a lot of things that are not in it that I think should be. Maybe I misunderstand it. But let me go through some of the things I understand are not in this bill, or are in this bill.

I also want to emphasize, once again, that for years Congress did not mind when the Supreme Court made it easier for the criminal and tougher on the victim and society. But when we finally get a Federal court system and a Supreme Court that starts making what I consider to be the right decisions—and let me tell you, what the majority of the American people think are the right decisions—then all of a sudden; oh, no, that is not good.

This conference report, as I understand it, would overturn at least 14 major Supreme Court decisions that finally have been dealing with frivolous appeals and endless litigation, not only in death penalty but other areas. So now, when we get a Supreme Court that is doing some good things; oh, no, we do not like it.

But before I read this list, I want to commend the distinguished Senator from Delaware, who will be speaking, I am sure, later on today on the conference report, urging we go ahead and pass it. I think he worked hard. He worked in good faith. I watched him put in long hours last year to hammer together, cobble together what I think was a pretty good crime bill.

Of course, he was aided and nudged and pushed by the distinguished leader on the Judiciary Committee, the Senator from South Carolina. These two men—maybe coming in many instances from divergent viewpoints—came together. And we had a bill, a crime bill, that I voted for. I got some criticism on both sides: You should not have voted for it because it had some gun provisions in there; or: You should not have voted for it because it was not strong enough.

But, basically, it was a big step in the right direction. Even the House,

passed a fairly good bill. It was not nearly as good as the Senate bill, but it had some very good provisions.

And then what happened? It went into the deep dark hole of the conference. I know the House Judiciary Committee. I served on the House Judiciary Committee. Let me tell you, I know from where they are coming. They do not want the death penalty. They do not want to get some limits on habeas corpus. They do not want good-faith evidence to be admitted if there is a technical problem. They are worried more about the criminals' rights and society's and victims' rights.

I have seen them, time and time again. I know their past record. I know their voting record. I know them individually and I know what happened.

When Senator BIDEN of Delaware and Senator THURMOND of South Carolina got into the conference, these House conferees would not even support, in some instances, their own House position. They wanted to weaken the House position even further. So that conferees approved this so-called crime conference report, that is estimated to cost $3 billion. And I do not object to that, to authorizing money to do the job that has to be done.

We are going to have to put our money on the line if we are going to deal with crime in this country. We have to do it up and down the board. We have to help local law enforcement people, policemen on the street. We have to help with more funds for DEA. And I am prepared to do that.

I want to take that money from somewhere else in Federal spending. I think crime is a place where we should concentrate. But this bill, authorizing $3 billion for very weak crime provisions, was passed on a Sunday night, November 24, 1991. The crime bill had dragged through the Senate and then the House, for almost a year and then at the end of the session, November 24, 1991, it passed on a straight party line vote. There were some conferees in that room that have prosecutor backgrounds, people who are very strong on law enforcement, people who have worked on this subject for years and years. But, there is something funny about it when it happens on a Sunday night just before we are going out of session for the year on a straight party line vote. That is not the way you pass a crime bill.

But, we can fix that. There is some good stuff in this conference report, but there is not sufficient language in here on the fundamentals of habeas corpus, the death penalty, or the exclusionary rule, and we need to get together. We need to do it now. How much more do we have to tolerate before we act? It is not just recent shootings on Capitol Hill. I was horrified when there was a drive-by shooting of a lady in Northeast Washington, she and her husband were just driving along, and she was shot. I was horrified by what is happening in my own State, my State's capital, Jackson, MS; Greenville, MS; Moss Point, MS. It is all over America, and the people want something done.

The Thurmond crime bill will do the job the way it needs to be done. I think the problem in getting it done is the House and the conference, but we have to deal with that. I urge the leadership of the judiciary committee and the leadership of the Senate to find a forum to make this happen.

Let me tell you what is not in this conference report, some of the things that really bother me. The conference bill rejects the central reform passed by the Senate, which recommended that habeas filings in capital cases be limited to new claims which have not been fully and fairly litigated in State courts. As I noted earlier, it overturns at least 14 Supreme Court cases that limit frivolous appeals and endless litigation in death penalty cases and allows the filing of second or successive petitions for habeas relief when a death penalty inmate simply wants to challenge the validity of his sentence but does not dispute his guilt.

This conference report sets no time limit at all on habeas corpus filings by prisoners in noncapital cases and allows prisoners under sentence of death to delay a full year before applying for Federal habeas corpus. The time limit in the conference report is double the 180-day limit endorsed by the Senate in title XI of S.1241 or even by the House of Representatives in H.R. 5269. The conference report sets a time limit that is double the limit that was in either House. Where does this new limit come from?

Under the conference report, the courts are barred from appointing counsel in capital cases in all States. The courts are barred. Only defender organizations and comparable entities could appoint lawyers. Why? Is the court not competent to do that? Why do you put it over into the special interest area of defender organizations or similar entities? And imposes also counsel qualification standards for State capital cases which greatly exceed those that Congress has enacted for Federal capital cases.

In cases of substantial noncompliance with these new requirements, or with any performance standards invented by the appointing authority, all existing limits on raising claims that were not presented to the State courts would be waived.

The conference version will result in new claims of alleged technical defects in capital sentencing leading to second, third, fourth, and even subsequent Federal habeas corpus petitions and will even result in prisoners relitigating claims that have been rejected in earlier Federal habeas corpus petitions.

There was a lot of talk yesterday about how this police organization or that law enforcement organization supported the conference report that we are considering. It is interesting to me that the top law enforcement people in the States, the attorneys general, oppose the conference report; 31—16 Republican, 15 Democrat—State attorneys general wrote the President expressing their alarm at the habeas corpus provisions contained in the House-passed bill and urged the President to veto any legislation containing these provisions.

With regard to the death penalty, although this legislation authorizes the death penalty in some 50 Federal offenses, the trial procedures create new rights for defendants which would virtually ensure the death penalty would never really be imposed. This legislation provides for the death penalty in 50 instances, but it sets up mechanisms that make it impossible to implement.

The Senate passed a bill that makes firearm murders a Federal crime punishable by death. Why? Because if you want to do something about firearms being used in crimes, this is a way to do it. You have to exact a real punishment that is enforced. The conference report deletes a provision to allow the death penalty for drug-related killings in the District of Columbia—not just killings, drug-related killings. The conference report rejects the rule approved in Blystone versus Pennsylvania and Bovde versus California under which jurors are instructed to impose the death penalty if they conclude that the aggravating factors in the case outweigh the mitigating factors. Instead, it provides that jurors need never impose the death penalty regardless of their findings concerning aggravating and mitigating factors.

With regard to the exclusionary rule, the Senator from South Carolina [Mr. THURMOND] said the conference agreement substantially narrows the good-faith exception to the exclusionary rule and will result in a significant expansion of criminals' rights to challenge the admissibility of incriminating evidence used against them.

The conference report rejects the proposal contained even in the House bill, weak as it was in many respects. The report adopts instead a provision which codifies the existing good-faith exception for searches involving warrants that the Supreme Court adopted in United States versus Leon. Such a provision provides little reform in this area, and it is pointless since Leon is already the law. Moreover, the conference bill provision is not an accurate codification of Leon and would require the exclusion of more evidence than the existing rules.

The conference report, in another area—just so you will understand it is not just the exclusionary rule, death penalty, or the habeas corpus argument, it is in other areas—the conference report removes numerous man-

datory minimum penalties for firearm offenses, other violent crimes, and drug offenses.

Why? Why would we be removing minimum penalties for firearm offenses? Whose idea was it to drop that? Nobody that I can think of would want to drop that. The conference report requires that Federal prisoners be given drug treatment on demand and reduces the sentences of violent criminals upon completion. That is incomprehensible.

Let me just read now what Attorney General William P. Barr wrote with regard to the conference report on November 25, 1991. That is the Monday after the night passage of the bill on Sunday:

DEAR MR. MINORITY LEADER: I join men and women of law enforcement around the country and victims of crime in voicing my strenuous objections to the so-called "crime bill" reported by the House and Senate conferees this weekend. While law enforcement groups and victims of violent crime cry out for the Congress to move forward aggressively on criminal justice reform, the conferees now propose that we take a significant step backwards. The proposed legislation actually overrules several recent Supreme Court decisions favorable to law enforcement. This conference report does more for those convicted of crimes than it does for those victimized by them.

The American people know that our criminal justice system is failing because convicted criminals are able to escape just punishment through endless delays and repetitive technical legal maneuvering. This abuse has deprived our criminal justice system of any finality: convicted criminals can perpetually reopen and relitigate their cases even when their appeals have been completed and when there is no question as to their guilt. The guilty thus avoid punishment by filing frivolous habeas corpus petitions that drag on for years, consume valuable law enforcement resources, and reopen the wounds of victims and survivors. State law enforcement agencies demand relief. And yet, the conferees now propose that we actually create broad new avenues and new loopholes by which convicted criminals can exploit the system and evade punishment. The conferees propose to make the current situation worse by: 1) overruling certain reasonable limitations recently established by the Supreme Court on successive habeas corpus petitions; 2) imposing substantial costs on the states to fund these frivolous challenges while offering no prospect of finality and no relief to their already overburdened systems; and 3) offering criminals wider opportunities for continued frivolous delays than are allowed even under existing law.

The conferees also propose to step backwards on reasonable reform of the exclusionary rule. By rolling back court decisions which allow for the admissibility of evidence when police have acted in good faith, the conference report will handcuff police and increase the number of criminals who escape justice on legal technicalities.

Finally, in authorizing $3 billion for law enforcement programs, the bill offers only a mirage. Authorization of this funding when there is no appropriation is essentially meaningless. The irony here is that the Congress failed this year to fully fund the President's budget request for law enforcement, slashing it by $472 million—a 64% cut in the increases sought by the President. Dangling the empty promise of more grant programs before the eyes of state law enforcement cannot camouflage a weak crime bill.

In sum, the conferees have let down law enforcement, let down victims, and let down those in Congress who voted for tough anticrime measures. This "whirlwind weekend conference" cannot obscure the fact that the Congress has again failed to deliver on serious criminal law reform. If this bill comes to the President's desk, I will urge him to veto it.

This is a very strong letter. I do not even agree with the part about the funds. Maybe it is a mirage. Maybe there will never be appropriations. It is a fact that Congress many times does not fund the President's request for law enforcement, but I think we are going to have to put our money where our mouths are in this particular case.

Finally, time and again yesterday I heard Presidential politics or partisanship being mentioned. Tell that to Jack Russ, the Sergeant at Arms of the House, a Democrat. Tell that to the family of Tom Barnes, an aide to Senator SHELBY who was murdered inexplicably—by being shot in the head from behind. Tell it to his family. A Democrat. Tell it to so many of the people in this city being killed, so many people in my State being killed. They are not Democrat or Republican, really. They are victims. They are people whose lives are at risk, who are scared to go out of their homes.

What is happening in the streets of this city is indefensible. Maybe we are guilty. Maybe some of our own had to be affected before we would take action, but I have been worrying about it and complaining about it for months and for years.

This is not Presidential politics. This is an urgent matter, a crisis in our Nation's Capital and in our Nation as a whole and we need to address it now. The bill that was introduced by the distinguished Senator from South Carolina was done at his initiative after trying to work across the aisle, working with other Senators, working with the Attorney General. This bill was introduced to try to break this deadlock. We need to do something.

As far as partisan politics, it should not be. There should not have been a party-line vote on that conference report. We should stop this now. If you want to vote on the conference report, fine. I am not voting for this. I am not voting for a show and tell. I am going to vote for something that is real and is tough on criminals in this country. We need to say to Senator BIDEN and Senator THURMOND, go back and try again. Do something more on these repeated appeals and on trying to help the law enforcement people do their jobs; on the death penalty; on firearms, some of these things that were dropped from conference on firearms. I have never been able to imagine whose idea that was.

So it is not Presidential politics from the Senator's standpoint, and it is not partisan politics. I know there are tons of Democrats and Republicans in the Congress and all across America who say enough already. Let us do this job. Let us worry about the law-abiding citizens who are being raped, maimed, and murdered in America and quit shuffling around trying to find some additional way to comfort criminals who are convicted and encouraging them to avoid the swift punishment they deserve and that the American people demand.

Mr. President, I yield the floor.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

U.S. SECURITY

Mr. CRANSTON. Mr. President, the collapse of the Soviet empire has fundamentally changed the nature of the security threat to the United States.

In the place of an ideologically hostile superpower bristling with weapons of mass destruction, the new threat to American interests comes from a range of international criminal activities.

Terrorism, narcotics, and money-laundering, Mafia-like international cartels, and the proliferation of weapons of mass destruction and weapons technologies have replaced communism as the principal foreign threat to our way of life.

At the same time, the global march to democracy is still impeded or blocked in many countries by oversized military establishments whose main role is one of internal security—the persecution of internal enemies—rather than national defense.

The subordination of local police forces to the military in many of these countries virtually ensures two unhappy results.

The police become demoralized and professionally frustrated because their institutions are run by men who may also be in uniform, but who cannot really speak their language.

And the military inevitably become politicized given their hegemonic participation in internal security—a role we have wisely prohibited our own military here in the United States.

United States efforts to strengthen the administration of justice can help to promote the demilitarization of societies whose armed forces often constitute—even in countries such as Venezuela, with more than three decades of democratic experience—the greatest threat to democracy.

The failure of host country law enforcement discourages needed international investment, as foreign corporations face concerns of physical security and the ability to enforce contracts.

Mr. President, despite this important challenge, U.S. efforts to strengthen international law enforcement efforts

are woefully underfunded—particularly when compared to U.S. military assistance programs. They lack a coherent rationale and strategy, and are badly mismanaged.

Mr. President, these conclusions can be drawn after a careful reading of a GAO report, "Foreign Aid: Police Training and Assistance," which my office is releasing today.

The report provides an in-depth review of the training and assistance given to foreign law enforcement agencies and personnel. It focuses on three main issues: the legislative authority for training and assistance, the extent of U.S. activities, and experts' opinions on the management of these programs.

The GAO report should be a bucket of cold water on any illusions that U.S. security policy is up to the task of promoting American security interests in the post-cold-war era. Among the GAO's most important findings:

Despite legislation—section 660 of the Foreign Assistance Act—passed by Congress in 1974, designed to stop U.S. aid to foreign police committing massive rights abuses, there are a dozen exemptions that have been granted to allow some U.S. training and assistance of foreign police, thereby calling into question why section 660 remains on the books.

In fiscal 1990, five U.S. cabinet level departments trained and assisted police from 125 countries at a cost of approximately $117 million. In 46 countries two or more U.S. programs are operating.

Experts consulted expressed concern about the lack of guidance and coordination of U.S. police assistance activities. These concerns included the lack of a clear position on the role of police aid in new and emerging democracies, an absence of clearly defined program objectives and authorities, and a determination of how individual training efforts contribute to overall U.S. interests.

The administration was even unable to offer data on the exact extent or cost of assistance to foreign police.

Nobody knows exactly what we are doing; exactly what we are spending.

Mr. President, these findings call into question the entire cast of U.S. security assistance efforts.

Clearly, programs without clearly defined program objectives and authorities cannot provide the best assistance to foreign legal authorities.

The very dispersion of U.S. efforts—spread out among no less than five Cabinet-level departments—means that needed coordination in this increasingly complex arena is a very ad hoc sort of thing.

It is also clear that the section 660 provision of the Foreign Assistance Act, prohibiting police aid, has become a virtual Swiss cheese of exemptions, and its only real value appears to be as a brake on Department of Defense efforts to hold onto its budget by getting into law enforcement.

As one of those who fought—and would do so again if conditions did not change—to get such a restriction in place in the bad old days of the cold war, I can say that section 660 no longer serves its purposes and issues it addressed then cry out to be dealt with in a more affirmative way.

Liberals and conservatives alike have to rethink old dogmas in this field, and work together to craft programs which meet American security needs and promote democratization.

Mr. President, the report comes as part of a larger request made by my office, and those of the Senator from Indiana [Mr. LUGAR], the Senator from New York [Mr. MOYNIHAN], the Senator from Washington [Mr. ADAMS], and the Senator from South Dakota [Mr. DASCHLE].

The findings of this first study show that old orthodoxies in the security field are not only irrelevant, they are helping to leave the United States without the tools to promote international law enforcement and global demilitarization.

Mr. President, as the GAO notes, while U.S. aid to foreign police forces began in the 1950's, it was greatly expanded in the early 1960's, as concerns grew among U.S. policymakers about rising levels of Communist insurgent activity in the developing world.

Channelled mostly through the AID Office of Public Safety, by 1968 we were spending $60 million annually to train police in 34 countries. With the expansion of such assistance came accusations that the programs turned a blind eye, or worse, to violation of human rights, such as torture and summary execution, by recipient security forces.

"Hidden Terrors," a well-documented book on U.S. police training efforts in Latin America by former New York Times Saigon bureau chief A.J. Langguth, provided a searing indictment of these programs and the men who ran them. In 1979, the New York Times quoted Jesse J. Leaf, a former chief CIA analyst in Iran, as saying that CIA training of the Shah's SAVAK secret police was "based on German torture techniques from World War II."

Mr. President, careful analysis of that period suggests that there were six major flaws in U.S. training.

First, training was provided to so-called friendly anti-Communist regimes, without regard to whether they were dictatorships or not.

Second, law enforcement efforts were subordinated to U.S. counterinsurgency goals. As the GAO noted, U.S. training included such topics as counterinsurgency techniques, weapons use, and Communist ideology. This also meant, in practice, reinforcing the control of recipient countries' militaries over the police.

Third, and this is clearly borne out in the Langguth book, U.S. trainers were not always the best America had to offer.

Fourth, U.S. intelligence agencies were given an important role in the development and execution of these programs.

Fifth, police training was not placed in the broader context of administration of justice, with its emphasis on judicial and prison reform.

And, finally, human rights was rarely a factor in policy considerations at the time.

Spurred by reports that United States trained and equipped police in Iran, Vietnam, Brazil, and other countries were involved in torture, murder, and the suppression of legitimate political activity, I and others in Congress prevailed and we banned foreign aid to police forces in 1974.

This ban remained virtually ironclad until 1985, when Congress authorized the President to support "programs to enhance investigative capabilities conducted under judicial or prosecutorial control" in functioning democracies in the Western hemisphere.

As a result, the Department of Justice—together with the State Department and the Agency for International Development—established the International Criminal Investigative Training Assistance Program [ICITAP]. Operational responsibility was left entirely to ICITAP under the supervision of officials in the Deputy Attorney General's office, with policy guidance provided by the Department of State.

With an annual budget of less than $8 million, ICITAP has trained thousands of police, judges, prosecutors, and other criminal justice personnel from 17 Caribbean island states, 6 Central American nations, as well as Bolivia, Colombia, Peru, and Uruguay. It is important to point out that, under the direction of David "Kris" Kriskovitch, a former FBI special agent, ICITAP has steered clear of any hint of the kind of problems that plagued the old AID Office of Public Safety.

Many observers credit ICITAP with spreading a consciousness of the need for civilianized law enforcement in new and emerging democracies in the region, and the recently agreed-to Salvadoran peace treaty—with its emphasis on the role of a civilianized police force in internal security—is proof of the soundness of this approach.

Unfortunately, the ICITAP Program remains underfunded, overextended, and relegated to playing only a regional role. As we see from the GAO report, it may provide the only bright spot in an area characterized by administration ineptness and neglect.

Mr. President, Will Rogers once remarked that Americans are great at winning wars, but less successful at keeping the peace. Our winning of the cold war has given us an important opportunity to help mankind live in free societies under the rule of law. Demo-

cratic governments are natural allies of the United States and free market systems cannot exist unless there are judicial authorities that enforce its rules.

For all the money spent and all the sacrifices made during more than four decades of cold war, the Bush administration has failed to export an institution which lies at the very heart of our success as a democracy—our system of justice.

The new democracies of the world need our expertise and our help in learning how to enforce the rule of law through the professionalization of police departments, prosecutors' offices, the courts system and the prisons. In helping them establish law enforcement and judicial infrastructures, we give them the tools to help them rid their societies of oppression and the virus of militarism.

Whether the issue is the promotion of community-police dialog in South Africa's transition to multiracial democracy or the establishment of a civilian-run police force in war-torn El Salvador, people from those countries look to the United States for leadership, models, and technical assistance.

The relatively small number of renegade or outlaw nations—those engaged in terrorism, drug smuggling or weapons proliferation—in the world means that United States and multilateral efforts in international law enforcement can give a big bang for a relatively small buck.

In doing so, we can also help provide for American security interests in a world which has seen a quantum leap in the internationalization of crime.

Sophisticated international crime is far outpacing the ability of new democracies whose law enforcement institutions are weak, inexperienced, and already overextended by the struggle against ordinary crime.

One of the fastest-growing crime syndicates in the United States is a Russian-controlled organization whose local chiefs are expatriates living in New York.

The recent Bank of Commerce and Credit International [BCCI] scandal shows the difficulties of monitoring the operations of a multinational bank which used the most sophisticated modern business techniques and communications equipment and operated unmolested in dozens of countries.

Both the Italian Mafia and the Colombian drug cartels have found in the cash economies of the newly emerging democracies and their newly private enterprises opportunities for money laundering on a vast scale.

Overseas Chinese criminal enterprises are forming closer ties with United States-based Chinese crime groups, particularly as Chinese syndicates flee Hong Kong to escape China's planned takeover of the crown colony in 1997. The growth of these international criminal organizations requires a coordinated professional response not only in the United States, but from abroad as well.

Despite the unhappy history of U.S. police training programs, there is a growing consensus that improved international law enforcement must become a key U.S. policy objective, both to strengthen the process of democratization abroad and to make Americans more secure at home.

The U.S. model, with its emphasis on the critical distinction between internal security and national defense and progressive concepts such as community-based policing, can and must be aggressively advertised if new and troubled democracies around the world are to survive and prosper.

The 6-year record of ICITAP, which has operated in several difficult situations without a hint of scandal, suggests that police training, when carried out as an integral part of the overall strengthening of the justice system, can enhance local law enforcement efforts abroad; contribute significantly to the process of democratization by putting the police under the control and at the service of the community, and—over time—provide the contacts, good will, and expertise in other countries required to bolster Americans' sense of security both at home and abroad.

Mr. President, current U.S. efforts in strengthening global respect for the rule of law are woefully inadequate. The administration has focused its law enforcement efforts primarily in antiterrorism and antinarcotics assistance. A growing body of literature, of which the GAO report must be seen as a part, suggests these efforts will fail unless they are coupled with assistance to strengthen the justice systems of recipient countries as a whole.

The administration's peculiar insistence on a "military" strategy for the misnamed Andean drug war, a position from which they have seemed to back down from in the San Antonio drug summit, shows the bankruptcy of any course that does not include the justice system as a whole.

It is important to note that, as the GAO report bears out, there is no single agency that is in overall charge of U.S. international administration of justice efforts; there is no single articulate policy or objective that unifies these programs, and the proliferation of programs under several agencies has led to duplication of efforts and complications in implementation. The section 660 provision banning police aid is observed in the breech, and no longer serves the purpose for which it was intended.

Mr. President, as I have consistently pointed out on this floor, the administration's failure to provide leadership in this area has been particularly egregious in the emerging democracies of Eastern Europe. U.S. administration of justice efforts have been limited to a paltry $750,000 Rule of Law Program administered by the U.S. Information Agency [USIA].

A recent request for help in 19 separate areas by Polish Interior Minister Henryk Majewski was finally filled after an ad hoc interagency meeting was held at the State Department at which those attending had to pledge support from money out of their existing budgets.

There is no centrally coordinated effort to meet the needs of these countries, there is virtually no money available to meet their needs, and oversight appears to be planned on a similarly improvised basis.

Yet, the countries of Eastern Europe desperately need help in ridding themselves of the vestiges of the police state organizations left behind by the KGB and the Stasi. They need our support in changing the reality and the perception of the police as institutions of political repression, to that of organizations dedicated to the community's security and the eradication of crime.

Failure of the U.S. Government to develop a comprehensive program of coordinated support has meant that several Eastern European nations have sought help from private law enforcement entrepreneurs operating outside the control or direction of American policymaking and financed by private interests.

Mr. President, clearly greater efforts can and should be made, not just in Eastern Europe, but in the republics of the new Commonwealth of Independent States, in Latin America, Africa, and Asia as well.

I believe that there are four essential caveats which need to be made in order that—in developing programs for the future—the abuses associated with past U.S. police training programs do not happen again.

First, no assistance should be offered to any nation whose leaders have not been democratically elected, or which is not undergoing a meaningful transition to full democracy.

Second, there should be no intelligence agency participation in such training.

Third, those participating as trainers or instructors should be the best available from their professions.

And finally, all police training programs should take place within the context of a larger effort to improve recipient country administration of justice.

To conclude, Mr. President, the growing internationalization of crime requires a commensurate effort by the United States for strategies and programs to combat it. The post-cold-war era will see the emergence of new definitions of security and of threats, and police forces—well trained, well, equipped and conversant with U.S.

standards and practices—must provide the first line of defense of both democracy and the safety of the individuals who reside in it.

I believe an office needs to be set up within the Justice Department that would be responsible for oversight and coordination of all U.S. administration of justice programs, including police training, as well as to develop—in consultation with the State Department—the means to provide comprehensive technical assistance to new and emerging democracies.

It should also be U.S. policy that all security assistance programs reflect the essential distinction embodied in the principle of posse comitatus, whereby civilianized police forces are given the primary responsibility for the maintenance of internal order in the United States. U.S. help in establishing and strengthening of justice systems in these new and emerging democracies must also be conditioned on adherence to international standards of human rights.

Finally, increased efforts in the administration of justice area should be accompanied by a hard look at the rationale for U.S. military assistance programs, to ensure that the armed forces of a recipient country are not competing for control of law enforcement with local civilian police forces.

Mr. President, I ask unanimous consent that a copy of the GAO report be printed in the RECORD, as well as several letters on this important issue.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FOREIGN AID: POLICE TRAINING AND ASSISTANCE

[U.S. General Accounting Office]

(Report to Congressional Requesters, March 1992)

U.S. GENERAL ACCOUNTING OFFICE,
NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION,
Washington, DC, March 5, 1992.

Hon. ALAN CRANSTON,
U.S. Senate.
Hon. RICHARD LUGAR,
U.S. Senate.
Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate.
Hon. BROCK ADAMS,
U.S. Senate.
Hon. THOMAS A. DASHLE,
U.S. Senate.

This report partially responds to your request that we review U.S. training and assistance provided to foreign law enforcement agencies and personnel. This report provides information on (1) the legislative authority for providing assistance to foreign law enforcement agencies and personnel, (2) the extent and cost of U.S. activities, and (3) experts' opinions on the management of these programs.

BACKGROUND

The United States began assisting foreign police in the 1950s. The level of assistance expanded in the early 1960s when the Kennedy administration became concerned about growing communist insurgent activities and established a public safety program within the Agency for International Development (AID) to train foreign police. By 1968 the United States was spending $60 million a year to train police in 34 countries in areas such as criminal investigation, patrolling, interrogation and counterinsurgency techniques, riot control, weapon use, and bomb disposal. The United States also provided weapons, telecommunications, transportation, and other equipment. In the early 1970s, the Congress became concerned over the apparent absence of clear policy guidelines and the use of program funds to support repressive regimes that committed human rights' abuses. As a result, the Congress determined that it was inadvisable for the United States to continue supporting any foreign police organizations.

RESULTS IN BRIEF

In 1973 and 1974, the Congress enacted legislation that prohibits U.S. agencies from using foreign economic or military assistance funds to assist foreign police, but it subsequently granted numerous exemptions to permit assistance in some countries and in various aspects of police force development, including material and weapons support, force management, narcotics control, and counterterrorism tactics. The 1974 prohibition did not apply to the use of other funds by agencies such as the Departments of Justice or Transportation to train or assist foreign law enforcement personnel.

We could not determine the total extent or cost of U.S. assistance to foreign police because some agencies do not maintain such data. However, we identified 125 countries that received U.S. training and assistance for their police forces during fiscal year 1990 at a cost of at least $117 million.

Former and current U.S. government officials and academic experts who have been involved with assistance to foreign police forces stated that there is only limited headquarters guidance and coordination of such assistance. Some believe that activities may not be efficiently implemented nor supportive of overall U.S. policy goals.

LEGISLATIVE PROVISIONS ON POLICE ASSISTANCE

In the Foreign Assistance Act of 1973,[1] the Congress prohibited the use of foreign assistance funds for police training and related programs in foreign countries. In December 1974, the Congress added section 660 to the Foreign Assistance Act of 1961 to terminate AID's public safety program and expand the prohibition by stating that:

On and after July 1, 1975, none of the funds made available to carry out this Act, and none of the local currencies generated under this Act, shall be used to provide training or advice, or provide any financial support, for police, prisons, or other law enforcement forces for any foreign government or any program of internal intelligence or surveillance on behalf of any foreign government within the United States or abroad.[2]

The amendment applies only to funds appropriated to carry out the purposes of the Foreign Assistance Act, and does not apply to other agencies' appropriations. Also, the prohibition does not apply to any activity of the Drug Enforcement Agency (DEA) and Federal Bureau of Investigation (FBI) related to "crimes of the nature of which are unlawful in the United States" or assistance to combat international narcotics trafficking. According to DEA and FBI officials, the exemption permits these agencies to train foreign police. The act also permitted U.S. agencies to complete contracts for police assistance entered into before enactment of the amendment.

In 1981, the Congress began exempting additional activities or specific countries from the prohibition; for example, antiterrorism training, police investigative training, police force development in Panama, and military training to police in the Eastern Caribbean Regional Security System. (See app. I for further information on exemptions to police training.)

POLICE ASSISTANCE

Although some U.S. departments and agencies do not maintain data or regularly report on the extent or cost of assistance they provide to foreign police forces using their own appropriated funds, we identified 125 countries that received such training and assistance during fiscal year 1990 at a cost of about $117 million. U.S. programs providing assistance are the Department of State's International Narcotics Control ($45 million) and Antiterrorism Assistance ($10 million) programs; the Department of Justice's International Criminal Investigative Training Assistance Program ($20 million); and the Department of Defense's program to assist national police forces ($42 million). Two or more programs operate in 46 countries, with most of the funds spent for Latin American and Caribbean police. The Department of Justice also pays for police training from its own appropriated funds, but the Department was unable to identify the extent or cost of such training. (See apps. II and III for further information on assistance provided to foreign police forces.)

CONCERNS ON MANAGEMENT OF ASSISTANCE

Current and former State Department and other government officials, and academic experts who have been involved in assistance to foreign police forces, stated that the U.S. government lacks (1) a clear policy on the role of U.S. assistance to police forces in the new and emerging democracies, (2) clearly defined program objectives, (3) a focal point for coordination and decision-making, and (4) a means for determining whether individual programs and activities support U.S. policy or contribute to overall U.S. interests. They noted that each program is managed individually, and the only place that coordination is occurring is at the U.S. embassy in the country. They expressed concern that in a country with more than one program, activities may be duplicative. One official expressed the opinion that the U.S. government needs to develop national policy guidelines for all police assistance programs to insure that cumulatively they support common objectives. We are continuing to look at these issues in our on-going work (See app. II.)

SCOPE AND METHODOLOGY

We obtained information on U.S. training and assistance provided to foreign law enforcement personnel, reviewed the legislative authority for providing this training and assistance, and identified efforts to coordinate these activities. We did not review program implementation in recipient countries. We interviewed officials and obtained records from AID and the Departments of State, Justice, and Defense, in Washington, D.C.; reviewed legislation and agency legal opinions on foreign police assistance; interviewed academic and legal experts on current U.S. assistance to foreign police; and reviewed literature published on foreign police assistance and AID's public safety program.

[1] P.L. 93-189, sec. 2, 87 stat. 714, 716.

[2] Foreign Assistance Act of 1974 (P.L. 93-559, sec. 30(a), 88 stat. 1795, 1804).

We conducted this review from August 1991 to January 1992 in accordance with generally accepted government auditing standards. As you requested, we did not obtain written agency comments on this report; however, we discussed it with agency program officials and incorporated their comments where appropriate.

We are sending copies of this report to the Secretaries of State and Defense, the Attorney General, the Administrator of AID, and appropriate congressional committees. We will also make copies available to others upon request.

Please call me at (202) 275-5790 if you or your staff have any questions concerning this report. The major contributors to this report are Donald Patton, Assistant Director, Joan M. Slowitsky, Evaluator-in-Charge; and John Neumann, Evaluator.

HAROLD J. JOHNSON,
Director, Foreign Economic Assistance Issues.

APPENDIX I. LEGISLATIVE EXEMPTIONS TO THE PROHIBITION ON U.S. ASSISTANCE TO FOREIGN POLICE

The Congress has granted numerous exemptions to the 1974 prohibition against assisting foreign police forces. The exemptions generally authorize activities that benefit a specific U.S. goal, such as countering the terrorist threat to U.S. citizens overseas or combating drug trafficking.

INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1981

The International Security and Development Cooperation Act of 1981[1] removed the section 660 prohibition on assistance to foreign police forces in Haiti and allowed such assistance for Haiti during fiscal years 1982 and 1983. The purpose was to help stop illegal emigration from Haiti to the United States. Subsequent acts continued this exemption for fiscal years 1984, 1986, and 1987.

INTERNATIONAL SECURITY AND DEVELOPMENT ASSISTANCE AUTHORIZATIONS ACT OF 1983

With the International Security and Development Assistance Authorizations Act of 1983,[2] the Congress authorized an antiterrorism program to train foreign police in the United States. In 1990 Congress relaxed the section 660 restrictions to allow training outside the United States for 30 days or less if it relates to aviation security, crisis management, document screening techniques, facility security, maritime security, protection for very important persons, and handling of detector dogs.[3]

INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1985

With the International Security and Development Cooperation Act of 1985[4] addressed a series of police assistance activities. It expanded upon a 1984 act that authorized a judicial reform project in El Salvador and exempted assistance to Salvadoran police in judicial investigative roles from the section 660 prohibition.[5] The 1985 act expanded the judicial reform program and the police training exemption to countries in Latin America and the Caribbean. In 1988 the Congress further expanded the judicial reform program to allow police assistance to promote investigative and forensic skills, develop law enforcement training curricula, and improve administration and management of law enforcement organizations. This act specifically prohibited the Department of Defense (DOD) and the U.S. armed forces from providing training under this program.[6]

The 1985 act also exempted assistance for maritime law enforcement and other maritime skills from the section 660 prohibition, and removed the prohibition for any country that has a long-standing democratic tradition, does not have armed forces, and does not engage in a consistent pattern of gross violations of human rights. The act permitted such countries to receive any type of police assistance.

Finally, the 1985 act authorized assistance to Honduran and El Salvadoran police for fiscal years 1986 and 1987, provided that the President determined and notified the Congress that those countries had made significant progress in eliminating human rights violations. This exemption permitted DOD to train and equip these countries' police forces to respond to acts of terrorism. The exemption was not renewed beyond fiscal year 1987.

INTERNATIONAL NARCOTICS CONTROL ACTS

This series of acts approved certain police assistance activities in Latin America and the Caribbean for narcotics control purposes. The International Narcotics Control Act of 1986 [7] permitted DOD to provide training to foreign police in the operation and maintenance of aircraft used in narcotics control. The International Narcotics Control Act of 1988 [8] expanded DOD's role and allowed it to provide training and weapons and ammunition in fiscal years 1989 and 1990 to foreign police units that are specifically organized for narcotics enforcement in eligible countries in Latin America and the Caribbean. This act also allowed economic support funds to be provided to Colombian police for the protection of judges, government officials, and members of the press against narco-terrorist attacks.

The International Narcotics Control Act of 1989 [9] extended DOD's authority to train and provide defense articles to foreign police units in Bolivia, Colombia, and Peru in fiscal year 1990, provided they are organized specifically for narcotics enforcement. This authority differs from the 1988 act in that it allowed DOD to provide, in addition to weapons and ammunition, other defense articles such as helicopters, vehicles, radios, and personnel gear.

The International Narcotics Control Act of 1990 [10] authorized DOD to continue to train and equip police forces in the Andean region in fiscal year 1990. This act was similar to the previous acts in that it permits DOD to train police forces in the operation and maintenance of equipment and in tactical operations in narcotics interdiction and also allowed DOD to provide defense articles to these units. However, it also allows DOD to provide commodities, such as nonmilitary equipment or supplies, to narcotics control police forces. This act also continued the assistance to Colombia to protect against narco-terrorist attacks and extended this assistance to Bolivia and Peru for fiscal year 1991.

URGENT ASSISTANCE FOR DEMOCRACY IN PANAMA ACT OF 1990

In 1990, after the U.S. intervention in Panama, the Congress significantly enhanced the U.S. role in the development of the new police force in Panama. The Urgent Assistance for Democracy in Panama Act of 1990 [11] permitted training in areas such as human rights, civil law, and overall civilian law enforcement techniques. The act also permitted DOD, using prior year military assistance funds, to procure defense articles and related services for law enforcement forces in Panama.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT FOR 1991

The Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991[12] amended section 660 to allow U.S. assistance to police forces of countries that are members of the regional security system of the Eastern Caribbean. With the exception of Antigua and Barbados, other member countries did not require this exemption to receive assistance because they were covered under the existing exemption that permitted assistance to police forces in countries with long-standing democratic traditions, and no armed forces. Antigua and Barbados have armed forces.

OTHER EXEMPTIONS TO POLICE ASSISTANCE PROHIBITION

In addition to the exemptions previously discussed, there are other authorities that waive the prohibition on assistance to police forces of foreign countries. For example, the President may authorize foreign assistance when "it is important to the security interests of the United States".[13] This allows the President to waive any provision of the Foreign Assistance Act of 1961, including section 660.

APPENDIX II. U.S. ASSISTANCE PROVIDED TO FOREIGN POLICE

ANTITERRORISM ASSISTANCE

The goal of the Department of State's Antiterrorism Assistance Program (ATA) is to improve foreign governments' antiterrorist capabilities to better protect U.S. citizens and interests. In fiscal year 1990, the United States provided antiterrorism assistance to 49 countries at a cost of nearly $10 million. Sixty-two percent of the funds were spent in Latin America, the Caribbean, and Europe, and less than $500,000 was used to purchase equipment. Representative training included judicial protection, protection to very important persons, hostage negotiation, and antiterrorist operations. The Department of State manages the program and contracts with other U.S. government agencies, state or local police departments, and private firms to conduct the training. The Federal Aviation Administration, U.S. Customs Service, the Immigration and Naturalization Service, the Federal Law Enforcement Training Center, and the U.S. Marshals Service are regular trainers. In compliance with legislative requirements, most training takes place in the United States.

In addition to training provided under the ATA program, the Federal Aviation Administration provides aviation security training to a limited number of foreign officials who attend their basic security training courses. The course deals in part with the role of law

---

[1] P.L. 97-113, sec. 721(d), 95 stat. 1519.

[2] P.L. 98-151, sec. 101(b)(2), 97 stat. 968, 972.

[3] Aviation Security Improvement Act of 1990 (P.L. 101-604, title II, sec. 213(b), 104 stat. 3066, 3086).

[4] P.L. 99-83, sec. 712, 99 stat. 190, 244.

[5] Foreign Assistance and Related Programs Appropriations Act of 1984 (P.L. 98-151, sec. 101(b)(1), 97 stat. 964, 966 (1983)).

[6] Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1988 (P.L. 100-202, sec. 579, 101 stat. 1329-181 (1987)).

[7] P.L. 99-570, title II, sec. 2004, 100 stat. 3207-60.

[8] P.L. 100-690, title IV, 102 stat. 4181, 4261.

[9] P.L. 101-231, sec. 3, 103 stat. 1954.

[10] P.L. 101 623, sec. 3(d), 104 stat. 3352.

[11] P.L. 101-243, sec. 101(b), 104 stat. 7.

[12] P.L. 101-513, sec. 594, 104 stat. 2060 (1990).

[13] 22 U.S. C. 2364.

enforcement in support of passenger screening procedures and airport security programs.

INTERNATIONAL NARCOTICS CONTROL

One of the objectives of the Department of State Bureau of International Narcotics Matters (INM) international narcotics control training program is to strengthen host country enforcement and interdiction capabilities. During fiscal year 1990, INM provided a minimum of $45 million in training and equipment to foreign police, principally in Mexico, Jamaica, Colombia, Ecuador, Peru, Bolivia, Brazil, Venezuela, Pakistan, Thailand, and Turkey. These are all narcotics producing and trafficking countries.

INM reimburses other U.S. government agencies, primarily the Drug Enforcement Agency (DEA), Customs, and Coast Guard, to conduct the actual training. DEA provides narcotics investigative training, Customs teaches air, sea and land port search procedures, and Coast Guard teaches courses in maritime interdiction. Other agencies may also be requested to train on a reimbursable basis in areas where they have specific expertise. For example, DOD provides helicopter training to police in drug trafficking countries. Training is conducted both overseas and in the United States and is reviewed and approved by INM.

In addition, DOD used military assistance funds to train and equip narcotics enforcement police in several drug producing and trafficking countries. Documents provided by DOD show that in fiscal year 1990, DOD provided training and equipment with a value of at least $17 million to Mexico, $1.3 million to Bolivia, $10 million to Colombia, $1 million to Ecuador, and $1 million to Peru. DOD officials informed us that training and equipment valued at more than these amounts may also have been provided. However, documentation was not available at the Washington, D.C., agency headquarters level that specified the amounts for law enforcement activities. The equipment provided consisted of UH-1 helicopters and spare parts, ammunition, small arms, riot control equipment, radios, and miscellaneous personal gear.

INVESTIGATIVE AND INTERNATIONAL POLICE TRAINING

During fiscal year 1986, the Agency for International Development (AID) transferred funds to the Department of Justice (DOJ) to design, develop, and implement projects to improve and enhance the investigative capabilities of law enforcement agencies in the Latin America and the Caribbean region. This was part of AID's effort to reform judicial systems. Using these funds, DOJ established the International Criminal Investigative Training Assistance Program (ICITAP). Operating under State Department oversight, ICITAP has conducted criminal justice sector needs assessments in the region and has expanded its training to include basic police management and police academy development. In fiscal year 1990, ICITAP received $7 million from the Department of State for its regional program. It trained more than 1,000 students from the Caribbean, Central and South America and sponsored 7 conferences. Training includes police management, criminal investigation, crime scene search, and forensic medicine courses. Except for students sent to training programs in the United States, ICITAP training takes place overseas.

The Federal Bureau of Investigations (FBI) also provides limited training for foreign law enforcement officials. Each year approximately 100 international police officials attend the 11-week college level course at the FBI National Academy that includes studies on management and forensic sciences. The FBI pays for the training and subsistence, but does not pay for the students' transportation. Over the last 10 years, more than 1,100 foreign police officials from 89 countries have graduated from this course.

The FBI also established two training courses for foreign police using its own appropriated funds. The first began in 1987 when FBI agents along the Mexican border began training Mexican police to better assist the United States in its investigations. Mexican officers receive a 3-day course in basic law enforcement techniques to include crime scene management, collection and preservation of evidence, hostage negotiations, forensic science, and investigative techniques. Since 1987, over 400 Mexican border police have been trained. FBI officials stated that the FBI plans to establish a training school in Mexico during 1992 at an estimated cost of about $250,000 annually, excluding salaries.

The second course developed by the FBI for foreign police was to provide mid-level management training for police officials from the Pacific Island nations. The 4-week course includes first-line supervision, investigative techniques, and hostage negotiations. During 1991, 52 students graduated from the course held in Guam at a cost to the FBI of about $35,000. About 50 students are expected to attend this course during the spring of 1992.

The FBI also provides other training and assistance to foreign police as requested, but the cost is unknown. For example, the National Center for the Analysis of Violent Crime provided training to Canadian police. The Criminal Investigative Division conducted a training seminar for officers from Italy's three national law enforcement agencies on the use of sensitive investigative techniques such as the operation of confidential sources, undercover operations, and electronic surveillance. The FBI also furnishes on-the-job assistance to governments who request help during particularly difficult or sensitive investigations.

NATIONAL POLICE FORCE DEVELOPMENT

After the U.S. intervention in Panama in December 1989, ICITAP implemented a program to help develop the newly formed Panamanian Public Force using $13.2 million in fiscal years 1990 and 1991 foreign assistance funds. The goal was to develop a professional, civilian national police force that is fully integrated into Panamanian society, capable of protecting its people, and dedicated to supporting the Panamanian constitution, laws, and human rights. Since the program began, ICITAP has trained about 5,500 police officers and provided institutional development assistance, such as help in starting the National Police Academy, improved recruitment procedures, and creating an in-house self-monitoring organization. In addition, ICITAP has worked closely with U.S. Embassy and Panamanian government officials to develop plans and policies appropriate for a police force in a democracy.

COUNTERTERRORISM AND MILITARY ASSISTANCE

DOD supplies a limited amount of military training and assistance to police officials. During fiscal years 1986 and 1987, DOD trained and equipped the El Salvadoran and Honduran police to counter urban terrorist activities. This assistance was authorized in response to the murder of U.S. Marines by terrorists in El Salvador and was managed and delivered by the U.S. Army Military Police. The assistance consisted of training in counterterrorism techniques and the supply of police vehicles, communications, weapons, and other equipment. This effort cost $19.8 million, of which $17 million was provided to El Salvador.

In fiscal year 1990, DOD spent $6.4 million in previously authorized but unused military assistance funds to purchase needed equipment and weapons for Panama's newly formed national police force. Items procured included police vehicles, communications equipment, small arms, and personal gear. This assistance was a one-time, emergency program.

DOD has an ongoing military assistance program to support Costa Rican police. In fiscal year 1990, DOD supplied $431,000 in military equipment and $232,000 in military training to the Costa Rican Civil Guard to help them carry out their responsibility to protect the border regions of the country. DOD provided equipment such as vehicles, personnel gear, and radios, and military training in areas such as coastal operations. Additionally, DOD conducted technical training courses in equipment maintenance and medical skills among others.

DOD, along with the United Kingdom, supports the Eastern Caribbean Regional Security System that was formed after the U.S. intervention in Grenada. The Security System is composed of a few permanently assigned military officers, but largely depends upon island nation police officers who can be called up for military duty in case of emergency. The United States equips and trains these personnel to prepare them for such an eventually. In fiscal year 1990, DOD provided $4.2 million in military assistance funds that were used to purchase equipment such as jeeps, small arms, uniforms, and communications gear. DOD also provided $300,000 for training in special operations, rural patrol, field survival, and surveillance, as well as technical courses in communications, navigation, maintenance, and medicine.

DIFFICULTIES IN DETERMINING COST AND EXTENT OF ASSISTANCE

We could not accurately determine the extent or cost of assistance to foreign police because agencies do not regularly report on assistance funded out of their own budgets, some double counting of students may be occurring and agencies may not be differentiating between assistance provided to police and assistance provided to the military. For example, in response to our request, DOJ began collecting information on its support of foreign police, including data on travel expenses, salaries, and expendable items such as course materials. However, the Department could not assign a dollar value to all of these activities. Other agencies may be conducting similar work of which we are unaware. There also may be some double counting of foreign police trainees. For example, the agency supplying the training and the agency paying for the training may both include the trainees in their reporting systems, such as when ICITAP pays for students attending the FBI academy.

Also, we could not always determine whether a student was a police officer or a military member because some agencies do not collect such data, DOD officials informed us that once they receive permission to train police in a specific activity they do not provide a further accounting breakdown. For example, training provided to the Eastern Caribbean Regional Security System was for law enforcement personnel, although a few trainees may have belonged to military organizations.

CONCERNS EXPRESSED ABOUT POLICE ASSISTANCE

High-level program officials, former U.S. officials, and academic experts identified several issues that they believe affect the effectiveness of foreign police assistance. Their views are presented below; however, we did not verify whether the problems they identified have adversely affected programs in recipient countries.

LIMITED POLICY GUIDANCE OR CENTRAL MANAGEMENT

Officials with whom we spoke stated that overall police training policy guidance at the Washington, DC, headquarters management level was limited. A former U.S. Ambassador in Latin America said that because there is no U.S. policy guidance, each agency pursues its own program agenda, which may not be in concert with long-term U.S. interests. Thus, he said, the U.S. government lacks a mechanism for considering how the various activities contribute to a strategy of fostering democratic institutions or to serving other national interests.

Program managers informed us that each program is managed separately without a mechanism to insure that activities are coordinated and not duplicative. The Coordinator for Counter-Terrorism informed us that the effect of the various pieces of legislation and resulting programs is that there is a lot of disparate police training and some interagency competition, but without anyone in charge. The coordinator believes that this does not serve U.S. interests. He stated that a Policy Coordinating Committee coordinates all antiterrorism assistance delivered by participating agencies such as the FBI and the State Department. He noted however, that the committee does not coordinate with agencies providing police training outside of the ATA umbrella. In addition, although INM, DEA, and the other agencies providing narcotics control assistance coordinate with each other, officials informed us that they do not routinely coordinate with ATA or ICITAP on police assistance activities.

The absence of centralized monitoring or management leaves the focal point for decision-making at the embassy level. However, one program official believed that embassy personnel may be unaware of the full range of programs and training available and may lack expertise in police training. Further, given the multitude of programs, there is no single individual or office within the embassy with the expertise or authority to manage all programs. For example, the ATA program generally is coordinated through the embassy's regional security officer, while ICITAP generally coordinates its activities through a political officer, or directly with the Ambassador, and DEA manages its programs through either an in-country attache or a special narcotics coordinator.

A former U.S. Ambassador in Latin America stated that by allowing so much decision-making authority at the embassy level, the degree of oversight and coordination of police activities is dependent on the priority the Ambassador assigns to these activities. He said that not every Ambassador keeps a close watch on all in-country activities, and that this suggests the need for greater coordination, monitoring, and supervision at the Washington, D.C., level.

PROGRAM OBJECTIVES AND ACTIVITIES DUPLICATED

A State Department official said that because of the proliferation of programs and the overlap in objectives, U.S. agencies may be duplicating efforts. As a result, determining which agency will provide training may depend largely on whether an agency has the resources or takes the initiative. A program officer acknowledged that some foreign officials are receiving similar courses from different agencies and similar program objectives may also result in duplicative administrative and assessment functions. An ATA official stated that although ATA's charter limits its training to antiterrorism, the strategy and objectives of ATA's training parallel those of ICITAP; both want to improve law enforcement capabilities. DEA is also concerned about general enforcement capabilities as part of its drug interdiction activities. However, each agency conducts in-depth force capability and training needs assessments before commencing training.

APPENDIX III. COUNTRIES RECEIVING POLICE ASSISTANCE

Table III.1 shows the countries that have received assistance from the United States for their police forces during fiscal year 1990. The actual level of assistance varies significantly among countries. For example, a country listed as a recipient of INM counternarcotics assistance may have had as few as one participant in a training course, or received many millions of dollars in training and equipment. Assistance listed under the DOJ includes the FBI but not ICITAP. Although ICITAP is a DOJ program, it receives foreign assistance funds channeled through the Department of State. The ATA column includes only antiterrorism assistance managed under that program. The assistance listed under INM includes training provided by DEA, U.S. Coast Guard, and U.S. Customs Service.

TABLE III.1: COUNTRIES RECEIVING POLICE ASSISTANCE IN FISCAL YEAR 1990

	ATA	DOJ	ICITAP	INM	DOD
Africa:					
Botswana				X	
Burkina Faso	X				
Burundi	X			X	
Central African Republic	X			X	
Chad	X			X	
Congo	X				
Cote D'Ivoire	X				
Ethiopia				X	
Gabon	X				
Ghana				X	
Guinea	X			X	
Kenya	X			X	
Mali	X				
Mauritania	X				
Mauritius				X	
Mozambique				X	
Niger	X				
Nigeria				X	
Rwanda				X	
Senegal	X				
Seychelles				X	
Sudan				X	
Tanzania				X	
Togo	X				
Uganda				X	
Zaire	X				
Zambia				X	
Zimbabwe				X	
Latin America and the Caribbean:					
Antigua-Barbuda[1]			X	X	X
Argentina				X	
Bahamas				X	
Barbados[1]	X		X	X	X
Belize			X	X	
Bolivia[2]	X		X	X	X
Brazil				X	
Chile				X	
Colombia[2]	X		X	X	X
Costa Rica	X		X	X	X
Dominica[1]	X		X	X	X
Dominican Republic			X	X	
Ecuador	X			X	X
El Salvador			X	X	
Grenada[1]	X		X	X	X
Guatemala			X	X	
Guyana			X	X	
Haiti				X	
Honduras	X		X	X	
Jamaica	X		X	X	
Mexico[2]		X		X	X
Nicaragua			X		
Panama[2]	X		X	X	X
Paraguay				X	
Peru[2]	X		X	X	X
St. Kitts & Nevis[1]	X		X	X	X
St. Lucia[1]	X		X	X	X
St. Vincent[1]	X		X	X	X
Surinam				X	
Trinidad & Tobago			X	X	
Uruguay				X	
Venezuela				X	
East Asia and Pacific:					
Australia		X		X	
Brunei				X	
Fiji				X	
Hong Kong				X	
Indonesia				X	
Kiribati				X	
Korea				X	
Laos				X	
Malaysia				X	
Marshall Islands		X			
New Zealand				X	
Papua New Guinea				X	
Philippines	X			X	
Samoa				X	
Singapore				X	
Solomon Islands				X	
Taiwan				X	
Thailand	X			X	
Tonga				X	
Tuvalu				X	
Vanuatu	X	X		X	
Europe and Canada:					
Austria				X	
Canada		X			
Cyprus	X			X	
Czechoslovakia	X			X	
Denmark				X	
England		X		X	
Finland				X	
France				X	
Germany		X		X	
Greece				X	
Hungary	X			X	
Iceland				X	
Ireland				X	
Italy		X		X	
Malta				X	
Netherlands		X		X	
Norway				X	
Poland	X			X	
Portugal	X			X	
Spain				X	
Sweden				X	
Turkey	X			X	
United Kingdom				X	
U.S.S.R				X	
Yugoslavia				X	
Near East and South Asia:					
Bahrain				X	
Bangladesh				X	
Egypt	X			X	
India				X	
Israel	X			X	
Jordan	X			X	
Kuwait				X	
Lebanon				X	
Maldives				X	
Nepal				X	
Oman				X	
Pakistan	X			X	
Qatar				X	
Saudi Arabia				X	
Sri Lanka	X			X	
Syria				X	
Tunisia	X			X	
United Arab Emirates				X	
Yemen				X	

[1] These countries are members of the Eastern Caribbean Regional Security System which received a total of $4.5 million in military training and equipment. They also received investigative and other training from ICITAP.

[2] Available data indicates that these countries received at least $5 million in police training and assistance.

U.S. SENATE,
Washington, DC, May 2, 1991.

Hon. RICHARD THORNBURGH,
Attorney General, Department of Justice, Washington, DC.

DEAR DICK: As you know, I have been very interested in the issue of designing U.S. security assistance programs for the post-Cold War period. Obviously, administration of justice and police training form part of the core of programs that might significantly benefit from a hard look at their future, with a view to making them more appropriate for the 1990s.

To this end I, together with four of my colleagues, recently asked the Government Accounting Office to look into both the way the system is currently working, as well as proposals for its reform. Among the issues we asked the GAO to address were the following: the intent and efficacy of current restrictions on civilian police training; the scope, structure and efficacy of existing administration of justice programs, and the compatibility of security assistance training with U.S. models of civil-military and civil-police relations.

I know you have given considerable thought to these issues, and that is my reason for writing to you today. I understand your office is receiving an increasing number of requests from abroad for help in the administration of justice area, particularly in police training and prison reform.

There appears to be a growing need for help in these areas, especially from the emerging democracies of Eastern and Central Europe. Our offices have been in contact on this particular issue before, and I thank you for your support for my bill, S. 552, the "Omnibus Eastern European Security Assistance, Act." I would very much appreciate hearing your views in full on how S. 552 could help meet the need in the Eastern European region, and what more, if anything, needs to be done.

And beyond that, I would like to take this opportunity to get your views on several of the issues we posed to the GAO on the issue of administration of justice:

(1) In what ways might we improve the administration of justice, including police development, in new and emerging democracies?

(2) Concerning the effects of the restrictions mandated by Section 660 of the Foreign Assistance Act on international police training:

(a) How many exemptions currently exist to the Section 660 rule? Given various programs and exemptions, does this confuse recipient governments or agencies about the purposes of U.S. police training? For example, the International Criminal Investigative Training and Assistance Program (ICITAP) is prohibited from teaching surveillance techniques, while other programs are permitted to give this type of instruction as part of their mission.

(b) How different is the context in which police training is currently carried out from that of the 1960s and 1970s? Related to this, what kinds of oversight mechanisms do you believe are necessary to prevent the allegations of abuse which occurred in the past? And how might police training programs be structured so as to anticipate effectively the objections to international police training which resulted in the passage of Section 660?

(c) Currently, most administration of justice programs carried out under Section 534 of the Foreign Assistance Act are administered by the Agency for International Development. The police training and assistance component under Section 534 has been re-delegated to the State Department which allocates funds to the Department of Justice to carry out such programs. There have been doubts expressed about AID's ability to carry out administration of justice programs. There have also been suggestions that all international justice assistance programs be placed under the supervision of the Department of Justice. What is your assessment about such proposals? If it is positive, how would Justice Department leadership in this field result in better and more effective programs?

(d) In your view, how successful a program is the International Criminal Investigative Training and Assistance Program? Is ICITAP, as currently structured, capable of carrying out programs on a world-wide scale? If not what changes are needed to allow it to respond to growing demands for its services outside Central and South America?

(e) What is the current U.S. law enforcement presence in Eastern and Central Europe? How many legal attache posts are there in American embassies there? If there is a need for more, what mission(s) do you see them performing? How many legal attaches are there worldwide, and how do they acquire their expertise? What plans are currently being made to strengthen any perceived gaps in law enforcement efforts in the region by the administration?

(f) If the Department of Justice were to be given a larger role in the area of international administration of justice programs, what efforts do you foresee it making to help host countries make a transition from military-led to civilian-run law enforcement, given the fact that, as has been noted by Congress, the separation of the military from civilian law enforcement functions has historically been a critical element in sustaining democracies around the world?

(g) What role do you see for community-based policing techniques in future police training programs?

I very much appreciate the opportunity to share with you some of my concerns about this increasingly important subject. I look forward to cooperating with you on administration of justice issues as they affect Eastern and Central Europe, and other regions as well. If you have any questions about this letter, please do not hesitate to have a member of your staff call Martin Edwin Andersen, my legislative assistant for foreign policy and defense at 224-8114.

With every good wish, I remain,

Sincerely,

ALAN CRANSTON.

U.S. DEPARTMENT OF JUSTICE,
Washington, DC, September 19, 1991.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRANSTON: On behalf of the Department of Justice, I would like to respond to your letter which raises questions with regard to the administration of justice and police training in the post Cold War Era. I apologize for any inconvenience our delay in responding may have caused you.

Attorney General Thornburgh did experience a great growth in the incidents of requests for assistance and training from abroad. He also recognized a growing reliance by the Department of Justice on the cooperation of foreign law enforcement organization in combating terrorism, drug trafficking, money laundering and international financial fraud. To facilitate this work, he formed an Office of International Affairs in the Department (a copy of his order is attached). We appreciate your interest in and support for our efforts to improve the effectiveness of international law enforcement.

I would like to respond to the particular questions you have raised.

1. In what ways might we improve the administration of justice, including police development, in new and emerging democracies?

Answer: The move to democratization requires reforms in most public institutions, including those charged with the enforcement and administration of justice. The rules of law and conditions for a democracy are such that effective administration of justice is essential if a new democracy is to survive. If crimes are seen as going unpunished for failure of effective investigation and criminals are perceived to act with impunity, the rule of law and conditions for democracy are undermined. Weak law enforcement institutions can threaten the viability of the democratization process. It is critical that the public have confidence in the criminal justice system of their country.

There are several major areas that can be addressed when determining ways to strengthen judicial systems and professionalize the police.

(A) Enhance judicial and prosecutorial capabilities:

(1) Improvement of the administration of justice depends heavily on judges, and prosecutors as well as police. Judicial training, court administration, and improved access to justice not only eases costly delays, but also builds the public's confidence in the judicial process.

(B) Improve coordination between judges, prosecutors, and the police:

(1) The institutional responsibilities of each of the judicial components must be carefully defined in a new democracy. Each component must learn more about the other and how they can better coordinate and interact. This is especially crucial in the investigation of a crime where lack of coordination can jeopardize an entire investigation.

(C) Improve technical skills of the police to deal with problems of crime prevention and investigation:

(1) In a democracy the public security task falls on the police. They must be seen as a protector of the citizens and not of the ruling authority. Because most of the public security responsibilities in emerging democracies were originally assigned to the military, who answered directly to the ruling authority, most police forces never received basic police instruction and therefore lack proper skills in investigation, especially criminal investigation.

(D) Design safeguards against human-rights abuses:

(1) A professional police force should inspire confidence in law enforcement officials and judicial institutions. These officials and institutions are responsible for guaranteeing fundamental rights, freedom and security. It is essential in the institutional development of every public security force in every democracy, that an instrument be created to ensure that allegations against the police are investigated and the citizenry is advised of the outcome of these investigations.

(2) Emphasis should be placed on respect for human rights during police training and emerging democracies. By doing so, police professionalism will increase and improve human rights records in these countries.

(E) Law enforcement institution building:

(1) Consideration should be given to the development and implementation of training programs in new democracies. This includes the development of curricula, and the creation of police academies separate from the military.

2. Concerning the effects of the restrictions mandated by Section 660 of the Foreign Assistance Act on international police training.

(a) How many exemptions currently exist to the Section 660 rule? Given various programs and exemptions, does this confuse recipient governments or agencies about the purpose of U.S. police training? For example, the International Criminal Investigative Training Assistance Program (ICITAP) is prohibited from teaching surveillance techniques, while other programs are permitted to give this type of instruction as part of their mission.

Answer: Nearly all assistance given by the U.S. Government to foreign law enforcement agencies must be exempted by Congress from Section 660 of the Foreign Assistance Act. Therefore, separate exemptions exist for each U.S. policy initiative designed to improve an aspect of policing in a foreign country. Examples are: Narcotics training, antiterrorism training, criminal investigative training, past International Military Education and Training (IMET) for police in El Salvador and Honduras and current IMET for Panama and the Caribbean region, as well as general police training to Panama. The above is not a complete list of exemptions to Section 660, but does represent the majority of U.S. assistance to foreign police.

A great deal of effort goes into coordinating these programs both in Washington and in the various U.S. embassies; therefore, any new initiatives should be an expansion of the above programs, rather than a new exemption.

(b) How different is the context in which police training is currently carried out from that of the 1960's and 1970's? Related to this, what kinds oversight mechanisms do you believe are necessary to prevent the allegations of abuse which occurred in the past? And how might police training programs be structured so as to anticipate effectively the objections to international police training which resulted in the passage of Section 660?

Answer: A 1989 Congressional Research Service report stated the following concerning the Agency for International Development's Office of Public Safety (OPS), which provided police training during the 1960's and 1970's:

The U.S. based training programs targeted mid-level supervisory officers and senior policy and program personnel, whereas in-country programs trained lower ranking police officers. Although curricula differed according to the targeted trainees, most programs had the dual objectives of institution building and counterinsurgency training. The technical curriculum of the OPS program—emphasizing police management and operations—included training in logistics, police lab techniques, personnel, police community relations, recordkeeping, criminal investigation, patrolling, maintenance and interrogation skills. The counterinsurgency courses emphasized the nature of counterinsurgency, communist ideology, riot control, pistols and weapons use, photography and police communications, chemical munitions, and bomb disposal.

OPS also provided law enforcement equipment to foreign police units. Equipment transfers fell into four categories: telecommunications, transportation, weapons and riot control, and general equipment (e.g. textbooks, training aids, criminal investigation equipment). Most equipment transfers were communication and transportation items.

[Alan K. Yu. U.S. Assistance for Foreign Police Forces (Congressional Research Service)—Library of Congress, July 18, 1989.]

ICITAP's role since its inception in 1986 has been to provide assistance to countries in Latin American and the Caribbean in an effort to strengthen the administration of justice in those countries. Specifically, ICITAP develops and implements:

(1) Programs to enhance professional capabilities to carry out investigative and forensic functions conducted under judicial or prosecutorial control;

(2) Programs to assist in the development of academic instruction and curricula for training law enforcement personnel; and

(3) Programs to improve the administrative and management capabilities of law enforcement agencies, especially their capabilities relating to career development, personnel evaluation, and internal discipline procedures.

The heart of ICITAP's work is teaching basic techniques solely and immediately associated with the conduct of criminal investigations. In addition, ICITAP has developed courses for judges and prosecutors, with the objective of providing them a basic understanding of investigative techniques they can employ in directing investigations. Judges and prosecutors regularly participate in skills courses with the police, as well as receiving their own training from ICITAP. Another central effort is the enhancement of communication and coordination among the components of the criminal justice sector; the opportunity for high level discussions and exchange of views has been provided through regional and national conferences.

A major ICITAP theme in all the works undertaken is the value and necessity of physical evidence in the investigation and adjudication of crimes. The overall objective of ICITAP's forensic science development is to create full service crime laboratories, effective fingerprint repositories, competent forensic pathology, and equipped and proficient crime scene processing teams to support criminal investigations.

Institution building is an implicit benefit of improved criminal investigative ability and increased professionalism by the police and other entities within the criminal justice system. ICITAP's approach is to offer a gamut of courses directly linked to criminal investigations and offered in-country to all levels of officer corps police personnel and judicial and prosecutive professionals. Technical assistance, forensic internships, and equipment donations to police laboratories and crime scene processing units are focused on specific areas of forensic activity. Except in Panama, general policing matters are outside ICITAP's purview, as are any issues related to counterinsurgency or civil disorder control.

Past police assistance and training programs, most notably the OPS, fell victim to allegations of abuse in part because any police assistance program is automatically open to such allegations by the very nature of police activities—the bestowing upon an agency of government the right to use force when necessary to maintain order and public safety. In addition, because one of the stated goals of the OPS was the deterrence of activities deemed hostile to the interest of the United States—including the spread of revolutionary movements—resources and personnel were allocated to address a "counterinsurgency" aspect of police training, causing a public and media perception that OPS conducted intelligence activities.

In the current world situation where poverty and illegal drug activity overshadow ideology, the nature of police training and assistance programs has changed. Ideological objectives have been replaced by the need for professional, competent law enforcement. These programs must strive to be as accessible to States. Police assistance programs must be coordinated at a policy and procedural level with a single decision-making organ to avoid replicating some efforts while overlooking others.

In addition, these activities should be maintained in the hands of public institutions, such as an executive department, subject to full and complete Executive and Congressional review. Periodic accountability reviews conducted by the department's own internal audit/inspection service and the General Accounting Office are required to ensure that the stated mission and actual practice are the game. Above all, such programs must be conducted in the full light of day with full regard for the human rights aspect of policing.

(c) Currently, most administration of justice programs carried out under Section 534 of the Foreign Assistance Act are administered by the Agency for International Development. The police training and assistance component under Section 534 has been re-delegated to the State Department, which allocate funds to the Department of Justice to carry out such programs. There have been doubts expressed about AID's ability to carry out administration of justice programs. There have been suggestions that all international justice assistance programs be placed under the supervision of the Department of Justice. What is your assessment about such proposals? If it is positive, how would Justice Department leadership in this field result in better and more effective programs?

Answer: Both the Department of Justice and the Agency for International Development (AID) can point to historical accounts of criminal justice training. AID managed the Office of Public Safety and The Law and Development Program. Within the Department of Justice, the FBI has trained foreign police officers at its academy since 1936 and DEA has had a strong narcotics training program for foreign officers for the past two decades.

The Department of Justice takes pride in having worked with the Department of State and AID in the Administration of Justice program and stands ready to make available the many in-house resources it has to strengthen criminal justice systems in developing nations. These include the Office of International Affairs, the FBI, DEA, ICITAP, Bureau of Prisons, U.S. Marshals Service, the Advocacy Institute, Immigration and Nationalization Service, Border Patrol, the Bureau of Justice Administration, the Bureau of Justice Statistics and the National Institute of Justice.

(d) In your view, how successful a program is the International Criminal Investigative Training and Assistance Program? Is ICITAP, as currently structured, capable of carrying out programs on a worldwide scale? If not, what changes are needed to allow it to respond to growing demand for its services outside Central and South America?

Answer: ICITAP has proven to be a very successful program. It began in FY 1986 with a budget of $1.5 million and a permanent

staff of four; now a permanent staff of 31, contract staff of 40, and some 60 consultants carry out a 20 million dollar program throughout Latin America and the Caribbean. ICITAP's accomplishments have been praised by officials of the State Department and foreign governments.

The current structure provides ICITAP with the flexibility to expand or contract quickly in response to international developments. For example, three months after the Justice Department received its initial allocation of funds from State for the Panama program, ICITAP had a staff of six working out of the U.S. Embassy in Panama City implementing a detailed operational plan that ICITAP had developed. ICITAP takes justifiable pride in being an unbureaucratic, quick-response team of professionals, and could successfully employ its proven techniques in other regions of the world if authorized to do so.

(e) What is the current U.S. law enforcement presence in Eastern and Central Europe? How many legal attache posts are there in American embassies there? If there is a need for more, what mission(s) do you see them performing? How many legal attaches are there worldwide, and how do they acquire their expertise? What plans are currently being made to strengthen any perceived gaps in law enforcement efforts in the region by the administration?

Answer: There is currently no U.S. law enforcement presence in Eastern Europe. In Central Europe the law enforcement presence (sworn officers) is as follows:

Austria: DEA (3), Customs (2).

Germany: DEA (7), Customs (7), FBI (5).

Switzerland: DEA (3), FBI (2).

There is a greater need for additional legal attache posts in Eastern and Central Europe as well as in other parts of the world. As technology and modern transportation render an "ever shrinking world," it is increasingly important that DOJ be represented in the major foreign capitals in order to effectively counter international crime and terrorism.

In connection with the FBI's international mission and due to its standing within the international law enforcement community, the FBI continues to receive numerous requests for assistance on investigative, training, and technical issues. Many foreign government officials, including those of former Eastern bloc nations, have expressed an interest in having permanent FBI representation in their countries to enhance both the level of cooperation and their own agency's professionalism.

Currently there are 18 FBI Legal Attache (Legat) posts located in major U.S. embassies worldwide. These posts are staffed by 46 Legats and Assistant Legats and 41 office assistants. With regard to Europe, the State Department has recently approved a Legat post for Vienna. It is envisioned that this would be a regional post with responsibility also for Hungary and Czechoslovakia.

All Legats are experienced FBI agents with managerial and operational expertise. This expertise is derived primarily from their work-related background in foreign counterintelligence, counterterrorism, drugs, organized crime, and white collar crime. They receive additional training as needed before they leave for their posting, such as language training and State Department briefings.

The Department of Justice is currently examining law enforcement issues in Eastern Europe in an effort to determine how the U.S. can better assist these countries and establish viable civilian law enforcement agencies which will observe the rule of law. Last December the Attorney General visited Hungary and Bulgaria. He also had a number of meetings in Washington with his counterparts from Eastern Europe. We still have much to learn, but these meetings have provided valuable insights to the problems these countries are facing with law enforcement and the evolution to the rule of law. The parallels between Latin America and Eastern Europe are evident and the ICITAP model is ideally suited to be utilized in fostering this evolution.

(f) If the Department of Justice were to be given a larger role in the area of international administration of justice programs, what efforts do you foresee it making to help host countries make a transition from military-led to civilian-run law enforcement, given the fact that, as has been noted by Congress, the separation of the military from civilian law enforcement functions has historically been a critical element in sustaining democracies around the world?

Answer: If the Department of Justice were given a larger role in the international administration of justice programs, it could bring considerable expertise to those programs, over and above the criminal investigation expertise that has been provided for the past five years. As you know, the Department of Justice has substantial expertise in additional areas such as judicial protection; prosecution; witness protection; corrections; civil litigation; immigration; resolution of racial and ethnic conflicts; juvenile justice programs; justice statistics, etc.

In addition, outside the aegis of administration of justice as it is currently structured, the Department of Justice has expertise in drug enforcement and counter-terrorism. Also, it is currently providing some training and assistance which is funded by the State Department's International Narcotics Matters and Anti-Terrorism Assistance program.

(g) What role do you see for community-based policing techniques in future police training program?

Answer: Most of the countries in which ICITAP works are emerging democracies with a legacy of military domination and subsequent involvement in policing activities. There is a general distrust of the police because of their connection with the military, be it direct or indirect. The police tend to be authoritarian and lack social sensitivity, frequently incurring allegations of human rights abuses. For the most part, community/police relations are non-existent and the police lack credibility. ICITAP has found police services are incident-driven, with little thought or consideration given to crime prevention and reduction.

In general, because many police organizations are incident-driven, they react to crime rather than seeking the reasons why crimes occur. With the advent of community-based and problem-solving policing, departments in the United States have begun to explore and implement "proactive" policing techniques (a departure from traditional methods which have isolated the police from the community and narrowly defined their focus). Both community-based and problem-solving policing ideologies promote methods to prevent crime and address the issues that cause crime which is an important consideration in third-world countries where financial and human resources are scarce. Through its programs, ICITAP has attempted to instill a greater awareness for the development of programs which will enhance the relationship between the police and the community and create mechanisms that will enable the police to take a more proactive stance in addressing crime. These changes require a fundamental decentralization of authority and a greater awareness of the underlying conditions which cause crime, including the characteristics of the people involved (victims, suspects, public-at-large; the social setting) in which these people interact in the physical environment and the way the public deals with these conditions in general.

Most police organizations are not prepared to accept change or to implement programs aimed at crime prevention and reduction because this constitutes threat to the status quo and a perceived loss of power and control. However, there is a growing tendency to involve the community in policing to gain broader public support, develop information regarding trends and patterns within a community, and thus anticipate potential problems. Police organizations are slowly recognizing that to effectively carry out their mandate and thus survive as an institution, they must have a supportive public. An example of this can be found in Panama where the National Police are in the process of changing the traditional stationary guard positions to police beats in order to get the police on the streets where they can interact with the public. Also, community relation offices have been created within metropolitan Panama City precincts to encourage better relations with the community. Neighborhood Watch Programs are also being considered. As a result of these programs, ICITAP is beginning to look at its total program with a view toward adapting community-based techniques to other areas.

This, however, involves a substantial change from current practice requiring broad-based public involvement. To strike a balance between the mission to provide police services while protecting and respecting civil liberties, ICITAP courses and technical assistance programs promote respect for human rights and the needs of the community. Since the community-based and problem-solving policing require closer contact with the community it serves, public confidence in the police must be instilled in order for this to work. Ultimately, successful implementation of community-based and problem-solving techniques will render the police more efficient and effective in its efforts to reduce crime. For this to occur, those persons in positions to effect change must agree that changes are necessary and also the challenge and the difficulties involved in strengthening the ties between the police and the community.

Again let me express the Department's gratitude for your interest in supporting international law enforcement assistance and training. If my office may be of further assistance to you or your staff please let me know.

Sincerely,

W. LEE RAWLS,
Assistant Attorney General.

U.S. SENATE,
Washington, DC, April 12, 1991.

Mr. CHARLES A. BOWSHER,
Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR CHARLES: We are writing you today to ask that your office conduct a comprehensive review of U.S. security assistance programs in the post-Cold War period. The world-wide democratic revolution and the collapse of Soviet expansionism make this

effort both timely and significant. As a recent State Department policy paper noted:

"For over forty years the specter of international communism weighed heavily on the structures and priorities of United States economic and security assistance. This global threat to world freedom has finally collapsed. In its wake is the spreading worldwide recognition that freedom can only be sustained by governments whose legitimacy rests firmly on the expressed consent of the governed; that are themselves agents and protectors of individual rights; and that are capable of sustaining an environment conducive to equal economic and political opportunity for all citizens."

This fast-changing world context provides a framework with which our international security assistance must be evaluated. The global democratic revolution has put increased emphasis on issues of civilian control of the military and the need to provide clear-cut and achievable missions for a nation's security forces.

There are several areas of interest we would like the GAO to examine. These include: the mission, purpose and administration of the International Military Education and Training (IMET) program; the intent and efficacy of current restrictions on civilian police training; the career development of U.S. military personnel assigned to international security assistance programs; the scope, structure and efficacy of existing administration of justice programs; the compatibility of security assistance training with U.S. models of civil-military and civil-police relations, and human rights concerns.

In preparing the report we encourage your office to consult civilian governmental agencies, legislative committees, and non-governmental organizations with expertise in the areas of security issues, civil-military relations, police training, administration of justice and human rights in several key countries.

The following are the specific questions we would like to see addressed on each issue:

PURPOSES AND GOALS OF SECURITY ASSISTANCE PROGRAMS IN THE 1990'S

To what extent have U.S. security assistance programs been subject to changes in the past decade to reflect changing world realities such as the end of the Cold war; the importance of world-wide trends towards democratization; the primacy of civilian political control over the military and security forces, and the emergence of new international criminal networks such as the drug cartels? Is military assistance channeled through civilian authorities, rather than relying on military-to-military relationships as we have in the past? If so, how have these changes been effected? Do security assistance programs reflect fundamental strengths of the U.S.'s own successful experience in civil-military relations, such as the difference between internal security and national defense?

Please analyze these questions as they affect Africa; Asia; Latin America and Eastern Europe.

Have security assistance programs been cost-effective? What reforms have been introduced, based on program monitoring to make these programs more cost effective?

ADMINISTRATION OF JUSTICE AND POLICE TRAINING

(a) Is there a coherent policy for improving the administration of justice, including police development, in new and emerging democracies?

(2) Please evaluate the effects of the restrictions mandated by Section 660 of the Foreign Assistance Act on international police training.

(a) How many exemptions currently exist to the Section 660 rule? Please list them. Given various programs and exemptions, does this confuse recipient governments or agencies about the purposes of U.S. police training? For example, International Criminal Investigative Training and Assistance Program (ICITAP) is prohibited from teaching surveillance techniques, while other programs have to teach this to carry out their mission.

(b) How different is the context in which police training is currently carried out from that of the 1960s or 1970s?

(c) How might police training programs be structured so as to anticipate effectively the objections to international police training which resulted in the passage of Section 660?

(d) Do Section 660 restrictions on police training have the effect of encouraging a larger or more comprehensive internal security role by a nation's armed forces?

(3) Currently, most administration of justice programs carried out under Section 534 of the Foreign Assistance Act are administered by the Agency for International Development. The police training and assistance component under Section 534 has been re-delegated to the State Department, which allocates funds to the Department of Justice to carry out such programs. There have been doubts expressed about AID's ability to carry out administration of justice programs. There have also been suggestions that all international justice assistance programs be placed under the supervision of the Department of Justice or some other arrangement. We would like GAO to look at this debate and to make its own evaluation. Among the questions that should be addressed are the following:

(a) Does AID have sufficient personnel it can draw upon with experience in criminal justice or democratic development to address the growing demands for administration of justice programs worldwide? One criticism is that AID does not have staff skilled in prosecution; court administration; criminal case development and monitoring, and criminal and legal procedures. Does this affect their ability to develop and monitor such aspects of administration of justice?

(b) Related to question (3)(a), is AID equipped institutionally to handle sensitive political development issues such as administration of justice? One criticism that is sometimes heard is that AID does not report from the field on political, institutional and legal issues, limiting itself to accounting for disbursements made. Is this valid?

(c) Is AID able to react swiftly to breaking opportunities in the administration of justice area? Some critics complain that it took more than one year after Operation Just Cause for AID to develop and authorize a project paper for the justice sector in Panama. Thus, the criticism runs, while concentrating on project development, the antiquated and overloaded, Panamanian justice system received no technical assistance, training, etc.

(d) AID is also criticized for producing project papers that obligate the agency for five year periods and therefore do not allow for flexibility to take advantage quickly and effectively of new developments in the field. Is this accurate?

(e) To what extent are AID project managers sensitive to successful criminal justice development efforts in other countries? Do the project managers in the field have the technical knowledge required for justice sector activities?

(f) Are AID accounting and reporting requirements concerning institutional grants and loans suitably tailored to the possibilities of judiciary and justice sector ministries?

(4) What arguments might be made for transferring all administration of justice and police training programs to Justice Department jurisdiction? What are the pros and cons of doing so?

(5) How successful a program is the International Criminal Investigative Training and Assistance Program (ICITAP)?

(a) What have been the comments made about ICITAP in on-going U.S. government reviews of programs in the criminal justice sector?

(b) What comments or criticisms have been made of the ICITAP program by:

(1) countries receiving ICITAP assistance, and

(2) local and international human rights organizations?

(c) Is ICITAP, as currently structured, capable of carrying out programs on a worldwide scale? If not, what changes are needed to allow it to respond to growing demands for its services outside Central and South America?

(6) What is the current U.S. law enforcement presence in Eastern Europe? How many legal attache posts are there in American embassies in Eastern and Central Europe? How many are there in Western Europe? How many are there worldwide and who do they acquire their experience? What plans are being made to strengthen any perceived gaps in law enforcement efforts in the region by the United States?

INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET)

(1) What changes have been made in the IMET program to make it better reflect the changing realities of the post-Cold War world? Please include in the analysis changes in curriculum and those in the country selection process for IMET recipients. With a lessening of tensions in a world, a trend which is likely to continue for some times, what is the rationale for giving IMET to the number of countries that currently receive it?

(2) Current IMET training provides for coursework in civic action. Some have criticized U.S. efforts to promote civic action programs in foreign militaries, saying such training tends to politicize the military and makes it compete with civilian political leaders for scarce financial and technical resources. Please evaluate the appropriateness of these complaints in Africa, Latin America and Asia. How much civic action is taught to IMET recipients? Which countries' recipients receive such training? What evaluations have been made of the effectiveness of these programs in those countries participating in civic action programs?

(3) There have been proposals to extend training in defense and national security issues to qualified civilians in emerging democracies through the IMET program. It is argued that by doing so, the ability of elected officials in these countries to oversee their own military establishments will be increased. What programs are currently offered in IMET, or through other U.S. government agencies, that seek to meet this goal? What are the advantages and the drawbacks of having the IMET program more involved in this area?

(4) To what extent, if any, does IMET training offer to its recipients explicit exposure to the following lessons in the proper management of civil-military relations in the United States:

(a) that the control of the military budget by Congress ensures a close collaborative relationship between civilian political authority and the leadership of the armed forces;

(b) that there is close interaction and contact between civilians and military, and between the four services, throughout our command and control structure;

(c) that scores of civilian-run non-governmental agencies help to inform and to shape military policy, and

(d) that the military has remained at the margins of partisan politics in part because its role in internal security has always been sharply circumscribed.

How are these lessons conveyed to IMET recipients?

Should foreign military sales (FMS) be shifted from the foreign assistance budget to the defense budget?

CAREER DEVELOPMENT OF MILITARY PERSONNEL DETAILED TO SECURITY ASSISTANCE POSTS

Some concern has been expressed that American military personnel assigned to security assistance posts suffer from morale problems relating to their jobs and career paths. One worry is a perceived hostility to security assistance programs in general by sectors of the armed forces. Related to this is a feeling of some working in the field that their participation in this area negatively impacts upon their possibilities for professional advancement. Who is selected for security assistance assignments, and how? What problems or career anxieties exist, if any, among military personnel carrying out these functions? What efforts are currently being made to assure security assistance personnel that their efforts are an important military task? How do career advancement patterns for those involved in security assistance programs compare with other career patterns in the four U.S. armed services?

ANTI-NARCOTICS ENFORCEMENT EFFORTS

The effect of anti-narcotics assistance on democratic institutions and practices in new and emerging democracies has also been questioned. This issue is of particular concern in the nations of the Andean region, as well as in Guatemala.

In Section 1009 of the Defense Authorization legislation for FY91 Congress made two findings on this issue: First, that the separation of military and civilian law enforcement functions has historically been a critical element in democracies around the world, including the United States. And second, that there is a need to determine whether the current policies of the United States unduly emphasize military assistance to Andean countries rather that aid to civilian law enforcement entities carrying out anti-drug efforts in those countries.

We would like the following questions addressed:

(1) How does the role of host country militaries differ from that of police forces in regard to narcotics enforcement? What efforts are being made to help host countries where the military is involved in anti-narcotics efforts make a transition to civilian law enforcement, given the fact that—as noted by Congress—the separation of military and civilian law enforcement functions has historically been a critical element in democracies around the world?

(2) In what ways are host country police forces unable to address specific changes that have been prompted by narcotics production and trafficking in each country?

(3) What kinds and amounts of police and military assistance are being offered to the governments of Peru, Colombia, Bolivia and Guatemala by third countries to help fight narcotics production and trafficking? In what ways does the U.S. government coordinate its efforts with the efforts of these other countries?

(4) What guarantees does the U.S. government require to ensure that U.S. material is used to further U.S. anti-narcotics goals, as distinguished from host country counter-insurgency goals? What is the relationship between anti-narcotics and counter-insurgency activities as carried out by the militaries of Peru, Colombia and Guatemala?

HUMAN RIGHTS

Finally, the protection of human rights continues to be a primary concern in Congress when dealing with security assistance issues. Therefore, we would like the GAO to address the following questions:

(1) What has been the impact of U.S. military training and U.S. military assistance on the propensity of host country governments to investigate and prosecute violations of human rights by recipient government forces? To what degree have officers of host country security forces been punished for their crimes by competent government authorities?

(2) To what degree is training on humanitarian law—war crimes—incorporated into security assistance training programs? How many recipients of U.S. security assistance regularly teach humanitarian law to their own military and security forces? Given that in international and U.S. law human rights is a different concept than "humanitarian law," how is this difference reflected in U.S. training programs, both of Department of Defense security assistance personnel and of host country trainees?

(3) To what degree are human rights incorporated in security assistance training programs and curricula? Please give specifics: time spent on the issue relative to total training time, content of human rights education, and training of Department of Defense personnel in human rights issues in preparation for teaching activities. Also, please differentiate the information on the human rights component of training aimed at Department of Defense security assistance personnel from that aimed at host nation trainees.

Thank you very much in advance for your attention to this request. We ask that you give this project a high priority given its importance as a national security issue. If you have any questions, please do not hesitate to have a member of your staff call Martin Edwin Andersen at 224-8114.

Sincerely,

ALAN CRANSTON.
DANIEL PATRICK MOYNIHAN.
THOMAS A. DASCHLE.
RICHARD LUGAR.
BROCK ADAMS.

Mr. CRANSTON. Mr. President, I yield the floor.

OMNIBUS CRIME CONTROL ACT—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. SEYMOUR. Mr. President, I rise to address the conference report to H.R. 3371, the Violent Crime Control Act.

I listened earlier to the distinguished Senator from Delaware yesterday with great interest. I want to take a moment to respond to some of the remarks that he made, especially with respect to habeas corpus because, after all, what this conference report is about, to a large extent, is a fight over the reform of Federal habeas corpus.

As my colleagues know all too well, the Federal habeas corpus process is a statutory right given to convicted criminals to ensure that the judicial process that led to their conviction was fair. But for death row inmates, habeas corpus means endless delay, volumes of litigation, and the joy of seeing the legal system work against the wishes of the juries or the judges that had sentenced them to death.

For the families and friends of slain crime victims, habeas corpus means no finality, endless pain, and the horror of a legal system that fails to impose society's ultimate sentence.

The bottom line is simple, Mr. President. The death penalty cannot be enforced under the current habeas corpus procedures.

In the last 8 years, each Congress has enacted major anticrime, or antidrug bills, and all are necessary in our battles against violent crime and drug trafficking. But each of these crime bills, dodged the issue of habeas corpus reform, leaving it to the next Congress to make the tough choices on this issue.

Almost a year ago, Mr. President, President Bush challenged this body and the House of Representatives that if in fact our troops could win a ground war in the Persian Gulf in 100 hours, then surely Congress could respond with an adequate crime bill in 100 days. That was almost a year ago.

For our part here in the Senate, Mr. President, we mounted a strong bipartisan majority vote that passed—true habeas reform—only to see in the conference committee when representatives from the Senate and representatives from the House of Representatives got together in the conference committee process, only to see that torn asunder, and to steamroll a conference report that stripped the Senate's habeas provisions and replaced them with the House-passed procedures that are reform in name only.

So what happened is, although we did our job here, we gave it away, we sold the store in conference committee.

Just how bad is the conference report's so-called habeas reform package? Mr. President, it is bad enough to reverse 14 years of responsible Supreme Court decisions, including the landmark Teague ruling, that limits endless delays and frivolous appeals in delay cases. In other words, it is a step backward.

I will tell you this: It is bad enough to allow condemned prisoners to delay a full year before even applying for Federal habeas corpus. And it is bad enough to reject the Senate's proposal that habeas petitions for condemned

criminals be limited to new claims that have not been fully and fairly heard in State courts.

It is bad enough, Mr. President, to cause the attorney general of my State, the State of California, to announce that those provisions are "a fraud on the people of California and, most particularly, on the crime victims of the State of California."

In short, Mr. President, these provisions contain enough loopholes, legal trap doors, and other broad definitions to promote new, unnecessary litigation, rather than finality and fairness for those not on death row. The habeas provisions represent an opportunity—though many would argue it is remote—it is an opportunity for them to walk the streets again.

But rather than cut through the legalese, because I am not a lawyer, and I do not intend to imitate one, Mr. President, but let me give my colleagues an example of the problem I am talking about.

For Californians, I sure do not need to recount the brutal murders committed by Charles Manson, Sirhan Sirhan, and the Onion Field killer, Gregory Powell. Californians know these names all too well. They are, in fact, the most notorious killers in California's history.

In each case a jury of Californians decided that these bloody and violent killers deserved nothing less than death. However, liberal judges said the death penalty was inappropriate, and Manson, Sirhan Sirhan, and Powell were all resentenced to life in prison. In other words, the thought was if they cannot be put to death then at least let them rot in prison.

And those violent, bloody killers have in fact remained there for 20 years now without any hope for release. That is until the conference report came to us. You see, Mr. President, the Senator from Utah has convincingly argued that these killers could file a new habeas petition if the conference report's provisions reversing the Supreme Court's holdings on retroactivity were to become law. As we all know, for any violent offender not on death row, a habeas petition represents not delay but a chance at freedom.

The distinguished Senator from Delaware has disputed this argument, offering his own legal views, and certainly I will not challenge him as a distinguished student of the law. But I am sorry. Even if there is the slightest possibility, Mr. President, the slightest possibility that this conference report would result in a murderer's release because of some new right not known at the time he was convicted, I am not going to take that risk. I will not take that much risk to see a Charles Manson let loose to roam the streets of California or any other place in America. I do not think any of us here want to take that risk.

It is my understanding that the attorney general of California, Dan Lungren, agrees with the point made by the Senator from Utah. Now the citizens of California know well and respect the views of our State attorney general. He is also well respected by my colleagues here. His concerns are proof enough that there exists a serious problem in this conference report.

There should not be differences of opinion on matters of this type. If anyone disagrees on this kind of matter, it is so important that we should not proceed with the conference report even, as I said earlier, if there is the slightest possibility. The American people deserve no less and the people of California will accept no less.

Even though I think the juries that sentenced Charles Manson, Sirhan Sirhan, and Powell were right to begin with—and that is they should have had the death penalty—let us make sure they at least remain behind bars. Let us not provide the slightest opportunity for them to be out on the streets permitting them the opportunity to once again create mayhem and murder on our citizens.

I think that we owe that, Mr. President, not only to the citizens we claim to represent, but, more importantly than that, we owe at least that much to the victims and to the families of those victims.

So, despite all of this, there are those in the majority party that claim they have offered reform of the habeas system.

How can we call it reform after the arguments that I have made? Is there any Member of this U.S. Senate who would stand here and vote for something knowing that there was the slightest possibility that a murderer sentenced to life in prison could use this conference report, should it become law, as a loophole to get out on the streets again? I do not think so. I cannot believe that is true.

Although there are some that would disagree with what I have had to say—and I respect their right, including the distinguished Senator from Delaware, to disagree with what I had to say—but unless we can agree unanimously it just seems to me that the prudent course is to not move ahead on this conference report based upon, for one reason, and that is the deformation of the reform, or the alleged reform, of the habeas system.

How can we call it reform, Mr. President, when 31 of the Nation's attorneys general, 16 Republicans, 15 Democrats, concluded last November that the conference report's habeas corpus provisions were a sham? That is bipartisan; 16 Republicans and 15 Democrats, attorneys general of 31 of our Nation's States. How can it be called reform when every district attorney, Democrat and Republican alike, in my State, California, were united in an unprecedented show of support for the habeas corpus provisions before it got over into that conference committee and, as I said, was deformed in the process, stripped?

California district attorneys also concluded that the conference reports habeas corpus provisions are worse, are worse, Mr. President, worse than current law. Amazingly, amazingly the conferees found ways to make the current system even more endless for death row inmates and harder to bear for a crime victim.

If that is the case, I am sure that the 323 inmates on California's death row—yes, Mr. President, I said it correctly—323 inmates on California's death row, they are going to have plenty of free time on their hands, if this conference report becomes law.

Mr. President, I can understand that the Senator from Delaware does not think that the concerns of those 31 attorneys general across the Nation, nor the unanimous opinion of Republican and Democrat district attorneys in my State alike have indicated that they are not all that important. The Senator from Delaware certainly is entitled to his opinion. But I have not seen in my years such unified support in my State of California for their concern about this conference report.

I might add to the Senator from Delaware that if he thinks that there is not somebody out there that is concerned beyond the attorneys general or beyond the district attorneys, let me challenge him to talk to the average Californian out on the street. I would suggest he start with Coleen Campbell.

Coleen Campbell, who represents the family, the mother, of the victims, became enraged with the fact that those 323 inmates on death row could not be given full justice and receive the death penalty and so she joined with hundreds and hundreds of thousands of citizens—not DA's, not attorneys general, just common ordinary citizens—in overwhelmingly passing the crime victims initiative. And one of the key components of that initiative—this was only the third time, by the way, that an overwhelming vote was taken in California in strong support of a death penalty. That has not happened. So Coleen Campbell is in the process, as I speak, of contacting the distinguished Senator from Delaware to tell him there are a lot of people, Mr. President, a lot of little people who are very concerned that in fact what the conference committee did to the habeas corpus reform provisions sets us back when in fact we led everybody to believe we were moving forward, that we were going to tighten it up, that we were going to have a death penalty that worked, one that would be enforced.

No wonder, no wonder the American public is not just dissatisfied with the conduct and the activities of Congress, not just dissatisfied, but totally frus-

trated and angry. They have every right to be angry.

We told them when we passed that crime bill, and I went home to California and I told Californians that we have reformed habeas corpus, finally, and finally we would see the death penalty carried out in our State, and one or more of those 323 that have sat there year in and year out would finally pay the price. And then to see the conference committee strip those provisions from this bill is disgusting.

If you want to talk to somebody else in California, go talk to the friends and the families of the boys that were brutally murdered by that thug, Robert Alton Harris, who sat on death row for more than 10 years—a decade—singlehandedly—making a mockery of the current habeas process, laughing up his sleeve because he had found a way, as so many others, hundreds of others, have found a way to manipulate the system, to cheat the juries and judges, who in a fair trial, found them guilty and sentenced them to death. They laughed up their sleeves at us. Ask the families of the victims who Robert Alton Harris, in cold-blooded fashion, murdered. Ask them how they feel about this. I will tell you, there would be little doubt they would tell you very strongly about their opposition.

I would be happy to save the Senator from Delaware the problem of going to California and talking to citizens out there to see how they feel about this, and going beyond the Attorneys General—31—and all the DA's who, in California, unanimously are opposed to this thing. I will save him that problem by merely recognizing how frustrated the people of my State of California are and understanding their frustration. They ask, why has there not been one death-row inmate received the death penalty in the State of California since 1967?

Try to explain to the people in California why nationally only 3 percent of those sentenced to death since 1976 have been executed. Try to justify to them why we should support a conference report that makes it easier for a death row inmate to delay his sentence. Try to tell them why the majority party in the U.S. Senate will not let the death penalty be enforced.

Yes; I said Californians are angry and frustrated. They have also lost faith. And I am not referring to California's elected lawyers. I am talking about the law-abiding Californian. I am talking about the little person, the one that just goes about their work, day in, day out, continuing to pay their taxes; the little person that leads a law-abiding life, does not cause anybody any problems, just goes through their life performing as a responsible citizen, not making much mention or much cry or much to-do about anything. Try to tell them and justify to them why we should support a conference report that will, in fact, possibly send a Charles Manson back to the streets.

Well, I do not think you can do that. I do not think you can justify it. I do not think you can explain it. I do not think you can defend it. Because it is wrong. They are fed up, and I am fed up.

I do not need to remind my colleagues that the people of my State ousted two associate judges and the chief justice of the California Supreme Court. Now, that is drastic. That never had happened in our history. But the frustration level had gotten up to here. So Californians did what they could do—like good, law-abiding citizens always do what they can do—at the ballot box. They took out their rage, they took out their anger, and they threw out of office two associate judges plus the chief justice of the State of California's Supreme Court.

Now, those that would support this conference committee report will be doing nothing more than California's Chief Justice Rose Bird did. They will be making the system even worse. They will be saying by their vote to every Californian, "Sorry, you can't enforce the death penalty." The real title to this conference report should not be the Violent Crime Control Act. A better title would be "Rose Bird's Revenge Bill."

So let us be clear. The Democrats' conference report does not reform the habeas process. It deforms it. Indeed, the Democrats are not kidding, Mr. President, when they say their conference report is a tough crime bill. The problem is, it is tough on law enforcement. It is tough on crime victims. And it is tough on law-abiding citizens who want an enforceable death penalty.

That is why this conference report is on a fast track to nowhere. That is why I joined with my good friends from South Carolina, Utah, and Kansas to introduce a new crime control bill that contains, Mr. President, the true habeas reform provisions that we, in a bipartisan fashion, had passed last summer.

We introduced this bill because we do not intend to duck nor destroy habeas reform. We are going to achieve it if we have to stand here until the Sun comes up and the Sun goes down; day in, day out; week in, week out. We will not back away from this commitment. We have come too far. We have waited too long. Now is the time, and we are not going to let the time pass. We will seize this moment.

We are not here—in this new version of the crime bill that we pass—we are not here to just leave it to the next guys on duty. We will not just leave it to the 103d, 104th or 105th Congress to fix or to correct the harms that this conference report will cause. We are not going home and we are not going into the 1992 election saying: Hey, we got a crime bill, we really got tough on crime, when there is a hole big enough for a Mack truck on habeas reform to be driven through.

We are not going to do that. We are here to say to crime victims and members of law enforcement that we of the 102d Congress intend to get the job done, and we are not going to leave until we do. We are here to put an end to the never ending, often frivolous appeals that have made the death penalty a joke. It is nonexistent as punishment. And those 323 inmates that have been sitting on death row in California since 1967 know damn well that is the truth. They laugh at us.

Now, just as important to the new Crime Control Act introduced this week is the fact that it reaches out to help our dedicated cops on the beat. It contains $1 billion for grants to State and local law enforcement, including $150 million for programs to put more cops on the beat. Our new bill also contains $345 million for our dedicated Federal law enforcement officers, as well as an additional $75 million for antiterrorist activities.

And while I am on the subject of funding for law enforcement, let me point out that I understand why law enforcement groups wanted the conference report passed. They need the money.

And that is what they were responding to. There is a price, and we are not going to pay the price of giving away habeas corpus reform so that these dollars—very important dollars—can flow to law enforcement. Given the fact that the conference report anyway is going nowhere fast, I am going to ask law enforcement which bill do they support now. And I know which bill they support because they were in strong support of the bipartisan bill that the U.S. Senate passed last summer before it got mangled and destroyed and deformed in that conference committee.

The new Crime Control Act that we recently introduced also does not ignore the worthwhile provisions that ended up in the conference committee's round file for no reason at all. They just stripped it clean.

Those that support the conference report will tell you that this is the most comprehensive crime legislation ever considered by Congress. Well, absent the comprehensive reforms made in the habeas process, the conference report is a glass half filled with reforms. The conferees, of course, would say, "Take a look at the part that is filled, do not worry about the part we emptied out, just take a look at what we left you." I urge my colleagues to look at what was tossed out, and why was it tossed out? You ought to give a good reason for throwing some of the things out of that bill that were in this because we worked hard, here, in a bipartisan fashion, to put them in there. Why did the

conference committee throw them out? Why? Indeed, if I had to grade the conference report, I would give it a "I," for "incomplete."

For example, why did the conferees leave out a provision that I authored that makes a much-needed technical change in the Armed Career Criminals Act? This change was so strongly supported by both sides of the aisle in the Senate that it was passed by voice vote. What would it have done? It would have ensured that violent repeat offenders served the mandatory minimum sentence of 15 years under the Armed Career Criminals Act. This provision had the strong support of local, State, and Federal law enforcement and had the bipartisan support of the California delegation, congressional delegation, and, in fact, was passed by voice vote of this body. But it was left out. Why was it thrown in the ashcan?

The Senator from Delaware says that while this conference report sits idly by, crime continues to run rampant in the streets. Even if the conference report was passed, which it is not going to be passed, crime would still run rampant in my State in large part due to the conferees' refusal to include that technical correction that I authored. So why did they leave it out? Because this is such a tough crime bill? I suggest the opposite is true.

Mr. President, why did the conferees fail to include important increases in penalties against those that criminally exploit our children? These provisions would have increased penalties for distributing drugs to minors, for trafficking in drug-free zones, and would have created a new offense—that I authored, Mr. President—that would strike at those who use minors, who use kids, to commit their crimes. In my State kids as young as 8 to 11 years old are being recruited to serve in drug gangs. The provisions that the conferees left out, they threw in the ashcan, would put those thugs who use and abuse kids to commit these kinds of crimes behind bars for a long, long time.

But why were those provisions left out? Why would they throw them in the ashcan when, in fact, they would receive strong and broad partisan support of this body, the U.S. Senate? Why would they throw them out if they wanted a tough crime bill? And why did the conferees fail to include even their own House crime bill's provisions that doubled the maximum penalty for recidivist rapists, those who rape more than once, and other sex offenders? That provision was carried overwhelmingly by majorities in both the House and the Senate. Why did they leave it out?

I think we are beginning to get the answer to that question. They just did not want a tough crime bill. They wanted a label on it that made it look like a tough crime bill, but when you peek underneath it—nothing there.

Why did the conferees fail to include another provision that I authored that was not too complicated? It was nothing real dramatic, but a step that would impose fines on those who use illegal aliens to commit aggravated felonies and then take the fines that we have collected and use them to identify and deport other criminal aliens after they had served their time. Everybody liked that idea here. In fact, it was passed, once again by a voice vote, totally supported, and it had real bipartisan support. But, once again, the conferees dumped it out. They threw it in the trash can. Why?

I will be frank. Both Senate and House bills contained a number of provisions that were very important to California, but they were left out by the conferees. Given this, and the conferees' failure to address the most important part of that bill, habeas corpus, I do not think any of them would win any crimefighter contests in California.

I can go on and on and question the acts of the conference committee, but the point is clear. In the Democrats' rush to steamroll a crime bill through this Congress, the need for a tough, comprehensive crime bill took a back seat to the desire to put forward a weak, watered-down proposal. The American people and Californians, for my part, do not deserve second best when it comes to enacting measures to combat violent crime and drug trafficking in our schools, our parks, and our neighborhoods. That is why I cannot support this conference report. The Democrats can argue all day long that this conference report is good. But it is not good enough. And I, as one Senator, am not going to stop until we have delivered a bill that is much more like the bill that this House, in a bipartisan fashion, passed out of here.

If what you want is mediocrity, then support that conference report. If what you want is a label that says you are a real crimefighter and you are getting tough on criminals but then when you look underneath you have nothing, it is a sham, go ahead and vote for that conference report.

But, if you want a meaningful bill, a well-balanced bill, a bill that really, really finally will reform habeas corpus in such a way that there will be a real death penalty, a real one to act as a real deterrent, then, in fact, I suggest to my colleagues that what we need to do is to support the crime bill, the Crime Control Act that was introduced earlier this week.

The Crime Control Act cuts across the spectrum of crime from white-collar crime to drug-related crime, from terrorists to gangs, from naked violence on our streets to domestic violence in our homes. It is truly a comprehensive crime control bill which President Bush challenged us almost a year ago to deliver.

So I ask my colleagues to finish what we started last year. Let us send the American people a crime control bill that we can be proud of; nothing second best; not a so-so measure; not a bill that looks good up at the top but has nothing, no teeth in it and no backbone in it as you go through it.

And with respect to habeas corpus, let us finish what was started many years ago to institute habeas reforms that make the death penalty enforceable, not unobtainable. I have said it once before, I will say it again. The number one cause of death for a thug on death row must not be old age. The writing is on the wall.

Those who support the conference report must face one simple fact. The so-called Violent Crime Control Act contained in the conference report is dead. It has received its death sentence and it is in the process of being carried out. The Democrats know it is not going anywhere, but they want to continue this little charade, send it on to the President so the President will veto it, come back here for a veto override attempt, that will fail and then they will say, "Look, look the President vetoed a crime bill that had the death penalty and money for law enforcement. See America, the President is soft on crime."

Well, I have news, the American people—and I tell you for Californians—they are a lot smarter than that. They will see through that veil. They are not going to be fooled by such misguided legislation that has been labeled a crime bill compromise. Sure it is a compromise. Law enforcement, crime victims and their survivors and law-abiding citizens are all compromised by this report. Instead, Mr. President, let us send the Crime Control Act of 1992 to the House of Representatives and then send it to the President.

After all, our job is to reach an agreement on comprehensive legislation that will help, not handcuff, law enforcement in their fight against heinous criminals. We can do that. There is time. The clock has not run out. We had it, we did it last summer. Now let us straighten our backbone and strengthen our will and do it again. Let us get the job done. Thank you, Mr. President.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH. Mr. President, I want to compliment the Senator from California for his remarks with regard to the conference report and possible alternatives to it, because this is serious business. I have to say the conference report leaves a great deal to be desired. Some of my friends across the aisle would have everybody believe that the choice before the Senate is the conference crime bill or no crime bill. That is simply wrong.

The conference bill, I think we have shown over the last couple of days, is fatally flawed and it should die a well-deserved death. The truth, however, is that there is another alternative and that is the Crime Control Act introduced 2 days ago by my good friend and distinguished colleague from South Carolina, Senator THURMOND.

The Republican Crime Control Act contains some positive features of the conference report bill. There are some positive features in the conference report but the Republican Crime Control Act eliminates its decidedly negative features. I assure my colleagues if the conference report is not adopted, the Senate will have an opportunity to vote on a tough anticrime piece of legislation in this session.

Those procriminal features of the conference report include its language on habeas corpus. The conference report rejects the Senate habeas corpus title that was passed overwhelmingly in the Senate. It would have changed a lot of the problems that we have today.

The conference report rejects the Senate's standard that habeas cases can only be brought for claims that have not been fully and fairly litigated already by the States. It overturns at least 14 Supreme Court cases that limit frivolous appeals and endless litigation in death penalty cases. That alone ought to be a reason for voting against the conference report. It allows death row inmates, who do not even dispute their guilt, to file endless challenges to their sentences. That has been going on at a cost of billions of dollars to the taxpayers, to you and me and every other taxpayer in this country, by criminals convicted of murder, basically admitting it, not denying it, and yet filing frivolous appeal after frivolous appeal, hoping they can get a new trial because all the witnesses are dead, gone, intimidated, whatever.

The conference report sets no time limit on filing non-death-penalty habeas cases. It doubles the 180-day limit on death penalty habeas cases passed by the Senate allowing death row inmates to wait a full year after exhausting all direct appeals before even beginning the Federal habeas process. It prohibits State judges from appointing counsel in capital cases by requiring that only public defender organizations and comparable entities can appoint lawyers. It imposes unrealistic counsel qualification standards for State cases that only a few established defenders can meet.

Those unrealistic standards far exceed those that Congress has enacted for Federal capital cases. In other words, it makes it impossible to enforce a Federal capital jury verdict.

If standards are not followed, all procedural defaults are disregarded and current presumption of correctness for a State court fact finding would be reversed. It does not take an extraordinary intellect to realize that the habeas corpus provisions in the conference report were put there by the most liberal members of the House Judiciary Committee and the Senate Judiciary Committee, discarding all the tough-on-crime provisions with regard to habeas. That is reason enough to vote against this conference report.

With regard to the death penalty, although the bill adopts new death penalties—and we heard a lot of ranting and raving about how tough this is on capital crimes because they have listed so many more that can be considered capital crimes—and so although it adopts new death penalties, its procedures are so convoluted that the death penalty will seldom be returned and it will never really be carried out. That alone is a reason to vote against the conference report.

It overturns the case of Blystone versus Pennsylvania. It is a 1990 case, under which jurors are instructed to impose the death penalty if they conclude that the aggravating factors in the case outweigh the mitigating factors. Instead, the bill provides the jurors need never impose the death penalty regardless of their findings concerning aggravating and mitigating factors.

The conference report enacts unanimity requirements for the first time for the jury recommendation on the death penalty. Thus, when only one juror declines to impose the death sentence, regardless of the facts of the case, regardless of how heinous the crime was, the sentence is prohibited, even though all the other jurors want to impose it. Remember, the court already prohibits the prosecutor from objecting to seating jurors who are opposed to the death penalty in the first place and that is of course found in the case of Witherspoon versus Illinois.

Mr. President, I myself would very seldom use the death penalty. I would use it only in the most heinous of cases, and only cases where there are the aggravating circumstances, because I personally think it should only be used very sparingly. On the other hand, I believe the death penalty is a very, very important anticrime measure and it is one that we really ought to impose as punishment for appropriate crimes.

I have heard the distinguished Senator from Delaware flailing his hands in the air saying we have all these 53 death penalty provisions in this wonderful conference report. They are not wonderful death penalty provisions if you cannot enforce them. They are not tough on crime if you cannot enforce them.

And if you add the Federal habeas approach that they have in their conference report, my goodness gracious, you will never be able to enforce whatever death penalty might possibly be given. And a lot of those will be negated by the way they have written the bill and the way they have abolished the requirement that you do not have to have a unanimous jury verdict with regard to imposing the death penalty.

It is nice to talk about being tough on crime, and it is kind of cynical to do so, however, when you know that those sentences can never be, in fact, carried out.

On the exclusionary rule, a lot of Americans are starting to understand the exclusionary rule. The conference report narrows the good faith exception to the exclusionary rule. Many of the people who are arguing for the conference report today did not even want the good faith exception.

But when the Leon case came down, they knew that the Supreme Court had enshrined that in the law. So they now want to narrow the Supreme Court decision of Leon.

The conference report expands the criminals' rights to challenge the admissibility of incriminating evidence used against them. It does not accurately codify the Leon case which was a breath of fresh air, although in my opinion did not go far enough to get rid of allowing people to get off of criminal conduct that they have done on mere technicalities.

The conference report reverses the Leon presumption that police officers are entitled to rely on a magistrate's authorization to search. The conference report reverses the fifth circuit good faith exception which applies in warrantless searches and which is broader than the Leon decision approach, and that is in United States versus Williams, which was decided in 1980.

So the conference report basically hurts the exclusionary rule reforms that have allowed us to stop these criminals from getting off on mere technicalities. That happens in a wide variety of cases. The most easy to understand, of course, is where a long time after the fact witnesses are gone, or the evidence is gone, or it is very difficult to go to another trial where some court reverses on the basis of the exclusionary rule and they exclude all of the evidence that really was necessary to convict the person, or because of the exclusionary rule, the imposition of that rule, there is no way that the case can be proven again in a retrial. That has happened, and it has happened in this country in all too many cases.

The distinguished Senator from Delaware will say it did not happen very much, but that is not the point. Even if he is right, and he is not, that is not the point. The point is we are allowing hardened criminals to get off because of an arbitrary technical rule and that the Supreme Court has tired to resolve and the Williams case was resolved even stronger than the Supreme Court.

Mr. President, sexual violence is something that has affected a lot of

people in our society today because there is far too much of that going on.

This conference report, which some say is not such a great anticrime bill, rejects increases in the maximum penalty for recidivist rapists and child molesters. Both Houses passed that provision. Last year the Senate passed it, the House of Representatives passed it, and the liberals in both committees rejected the maximum penalty for recidivist rapists and child molesters.

That to me is amazing. How anybody can stand here and say it was a better bill than what we passed through the Senate I will never understand. The conference report rejects the House provisions providing that the Government gets the same number of preemptory strikes in the choosing of jurors. In other words, it preserves current law that the defense has 10 preemptory strikes and the Government has 6.

Preemptory strikes are very, very important in trial law but especially in criminal trial law. We tried to even it up so that the criminals or the alleged criminals do not have any advantage over the prosecution, and that both be given the same number of preemptory strikes; in other words, the automatic right, short of violation of civil rights, short of discrimination, the automatic right to strike any potential jurors for any reason whatsoever as long as it is not discriminatory.

The House put in there that both the prosecutor and the defense counsel have the same number of preemptory strikes. The conference report would preserve current law which gives the defendant 10 preemptory strikes and gives the prosecutors only 6.

The conference report rejects HIV. For those who do not understand that, that means AIDS testing for Federal sex offenders with disclosure of test results to the victims. That is a provision I sponsored. I am particularly upset that that is not in this conference report. It is reason enough to vote against the conference report.

Why should not the victims of sex offenders be warned and told that the sex offender is HIV positive? If the sex offender is not positive, why should not they be told that, to alleviate the worries and the fears? Why should some woman who has been raped have to have that worry when we can give her some consolation, and when we can give her some scientific information that will help her to know how to handle her problems one way or the other? Why should not we be more concerned about the person raped than we are about the criminal?

Let me tell you. I have been one of the major principal sponsors of the AIDS bills out of the Congress. I think if people watch the debates on those bills, I managed on our side and helped to write them. I think they are right. I see no reason in the world why some poor woman who has been raped by a criminal, and the criminals convicted, should not have an absolute right to have that criminal tested for HIV-positive results, and be told one way or the other whether that criminal was HIV positive.

I think it is time to get tough on rapists and those who commit sexual violence in our society. The bill, as advocated as a tough crime bill by the distinguished Senator from Delaware, does not have that provision in it. In fact, this conference report rejects Senate provisions, provisions we had in our Senate bill last year, before we went to conference, rejects the Senate provisions providing for restitution for victims of rape, child molestation, and child sexual exploitation offenses, whether or not physical injury results from such crime.

He calls that tough on crime?

Let me tell you something. If we cannot put in a tough crime bill provision that provides for restitution for victims of rape, for victims of child molestation, and other child sexual exploitation practices and offenses, whether or not physical injury results, then something is wrong with us. And it is certainly not a tough-on-crime bill with regard to that provision.

We could go on and on here, but let me go into involuntary confessions. In the famous 1991 case of Arizona versus Fulminate, that was a very important case which resolved the problems of involuntary confessions, and that decision was reversed by the conference report.

The Fulminate case simply recognized the commonsense proposition that if there is other independent evidence, such as fingerprints, eyewitnesses or video tapes, that establish guilt beyond a reasonable doubt, then a criminal should not be able to avoid punishment because the circumstances of his confession violated current standards of voluntariness. That is what Fulminate stands for.

Why, if a criminal would be convicted anyway, should the case be thrown out and have to be retried with all of the cost to the Government, all of the cost to the taxpayers, when there was sufficient evidence to convict the criminal anyway? It was a great decision by the Supreme Court, and one that was tough on crime.

Our friends on the other side would do away with that decision. They overrule it.

They call this bill tough on crime? Come on.

This is important stuff. That case was a well-reasoned case. The Supreme Court knew what it was doing. And it simply said if the criminal would have been convicted otherwise, you should not throw it out because of a technicality and forced confession. And sometimes forced confessions are sometimes "forced" confessions. Sometimes good defense counsel can raise almost any issue, and I have to say I commend them for doing it. I have tried a few of these cases myself as a defense counsel. And I have to tell you that the defendant deserves every possible benefit that the defense counsel can give that defendant.

On the other hand, society deserves—where everybody knows the fingerprints were there, everybody has the other objective evidence that would have convicted the defendant anyway—to not have that case thrown out because there may have been an involuntary, coerced confession.

Let me spend a few more minutes on the exclusionary rule with regard to the conference report.

Mr. President, let me just dwell for a moment on one example of why the conference report is unworthy of support. Again, it relates to the exclusionary rule. I have chatted about this in the past. The conference report does not merely fail to enact the President's tough provision on admitting illegally obtained evidence in circumstances justifying an objectively reasonable belief that the search was lawful. It not only fails to codify existing law accurately with respect to the admission of evidence obtained in good-faith reliance on a search warrant.

The conference report will result in freeing murderers, rapists, robbers, and drug dealers who would otherwise be convicted in Texas, Mississippi, Louisiana, Alabama, Georgia, and Florida. Why? Because the courts in those particular States admit illegally obtained evidence seized in circumstances justifying an objectively reasonable belief the search was lawful, even in the absence of a warrant. In this regard, the conference report sets back law enforcement in six Southern States, plain and simple. This is a procriminal provision that the conference report, which they are trying to pass off as tough on crime, contains.

The only people who benefit from this part of the conference report are criminals. If a police officer has an honest and objectively reasonable belief a search is lawful without a warrant, he or she will undertake that search every time, and they should. We want them to. If it is an objectively reasonable belief that the search is lawful, they will go ahead and conduct that search. Throwing out the evidence does not deter an illegal search in the future under those circumstances; it only helps murderers, rapists, robbers, and drug dealers. That is what the conference report does. It puts money in one hand of the police officer to fight crime, and then ties the police officer's hands behind his or her back with these procriminal provisions.

The conference report is a cynical effort to use money provisions to fool the American people into believing this is a tough crime bill. To entice support for the bill, they throw money at the

problem, and then skirt the issue of some of these very, very serious criminal legal issues.

What is the point, however, of trying to help police catch more criminals with the added funds if the criminals are going to be let off on technicalities? Why the charade? Because my friends on the other side have a problem. Most of them, in both the House and Senate, who are responsible for this bill—in fact, all of them, I would have to say, maybe with the exception of the distinguished Senator from Delaware, who has to carry their mail—they do not support the tough provisions on the death penalty, habeas corpus reform, and the exclusionary rule. I have to admit that the distinguished Senator from Delaware does not support some of that either. But they want to sound tough. So they put in a death penalty provision which is basically unenforceable. They have a provision labeled exclusionary rule reform, which is much worse than current case law. They have a provision labeled habeas corpus, which is much worse than current law and would allow the repetitive frivolous appeals to go forward.

It takes time to explain this, and we have done it over and over again, only to be met by evasions. But I do not believe that the American people are going to be fooled by this conference report. Neither should the law enforcement people.

Let me take a second and spend some time on the retroactivity provision, as I did yesterday. Mr. President, the conference report contains one of the most dangerous innovations in criminal law. It is section 204 of the habeas corpus title. This section governs the retroactive effect of Supreme Court decisions.

Even though the Senate rejected a similar retroactivity provision last fall, the Senate Democratic conferees agreed to accept House-passed language on this subject.

The question of whether a decision of an appellate court shall have prospective or retroactive effect is intimately connected with the question of whether a criminal conviction can ever be final. It is in the interest of those who are against crime to have those convictions become final at some time.

All habeas petitioners are prisoners whose cases are considered final. They are in the process of attempting to reopen long-finished cases.

Under current law, a defendant whose appeal is pending can generally take advantage of any recent or new court decision that is favorable to him or her. However, once his or her direct appeal is finished, and his or her case is considered final, he cannot avail himself of newly announced court decisions that are designed to govern proceedings in future cases.

This sensible rule is one—and frankly, the only one—that allows the criminal case to achieve any degree of finality. The rule, moreover, is a salutary one, because it encourages the courts to develop new and fairer rules of criminal procedure, free from the fear that a newly prescribed rule will have the effect of opening the jailhouse doors.

The Miranda case of a number of years back is a good example of how these principles work in action. When the Supreme Court laid down new rules which all future defendants could claim, the Court specifically held that the rules would only apply prospectively. How could they have held otherwise? To say that the specific Miranda rules must have been given before the Miranda case had even been decided would have meant that virtually every prisoner in America would have had to have been let out of prison. Had the Supreme Court not had the power to specify that its decision would apply only prospectively, we can certainly assume that it would never have decided Miranda as it did. The same is true of Escobedo versus Illinois and a number of other leading cases in the field of criminal procedure.

But those who advocate congressionally mandated retroactivity would take this power away from the Supreme Court. They would, instead, give to the individual Federal district courts, or that particular Federal district court hearing a habeas petition, the power to overrule the holding of the Court on the question of retroactivity.

They would, moreover, allow the district court to apply new rules retroactively to criminal cases that have already become final, thus opening up for review cases that may have been settled for years or decades and, if they are opened up, they would almost be impossible to try again.

As the Attorney General has observed, this innovation would overrule several leading Supreme Court cases and would "resurrect the chronic problems of unpredictability and lack of reasonable finality of judgments" which those decisions put to rest.

No efficient system of criminal justice can function under such an arrangement. If nothing else, the retroactivity rule contained in this conference report would encourage prisoners to file repetitious petitions simply in the hope that their petition may be heard by a new district court judge, one who may decide the retroactivity issue differently and more selectivity than the previous judge. At least, under the current system, the Supreme Court sets the rules, and they apply nationwide. We do not know how the district courts can sit if you have the conference report and you put an uncertainty in the law that I think is going to be almost impossible to overcome and would open up new ways for hardened criminals to get out of jail.

Congressionally mandated retroactivity is not designed to achieve justice. It has only two objectives. One, to prevent the execution of persons who have been otherwise unsuccessful in preventing the carrying out of their death sentences; and in noncapital cases or non-death-penalty case, to extend and perpetuate the pernicious influence of the liberal decisions of the Warren Court.

The best thing about the Warren Court is that it came to an end. This bill would allow key Warren Court decisions to be applied to criminal cases where even the Warren Court said they should not apply. As liberal as that Court was, it would not have gone as far as this conference report goes to let criminals off and to stop capital punishment and to hurt the criminal justice system.

But there is another more fundamental objection to the congressionally legislated retroactivity.

The Supreme Court's rulings on retroactivity should not be overruled by a single Federal trial judge whenever that judge determines, on whatever basis, that it is just to give the defendant the benefit of a law that the Supreme Court has ruled the defendant should not receive the benefit of. I question whether Congress even has the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. But, even if we do possess that power, it is clearly unwise to exercise it. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system. But that is what the conference report allows.

Let me illustrate how the Supreme Court's retroactivity doctrine works in practice and the benefits which flow from it. The doctrine has recently been addressed and clarified by the Supreme Court in the leading case of Teague versus Lane (February 22, 1989). There the Court reaffirmed the long-standing rule—which is also the law in most States—that newly announced rules of criminal procedure do not apply to cases that have already become final. That is the only workable standard of retroactivity in the criminal law. Congress should not now confuse a subject which the Supreme Court has so recently straightened out.

No habeas reform is worth reversing the Teague case. No habeas reform is worth reopening the long-final convictions of every prisoner in America, which is what reversing Teague will have a tendency to do; in fact, will do.

Section 204 of the habeas title proposes to set up criteria by which judges not on the Supreme Court can determine that decisions of the Court should have an effect directly contrary to that which the Court has concluded they should have.

That is clearly unconstitutional. The supremacy clause of article V clearly

establishes that the Supreme Court is the final arbiter of such matters, not the 700 or more Federal district court judges.

More importantly, consider the precedent that this bald-faced attempt to tamper with already-decided Supreme Court cases establishes. If Congress does have the power to determine when certain Supreme Court decisions shall apply and when they shall not—despite the Supreme Court having determined otherwise—then Congress will surely have the power to determine who shall be bound by those decisions, what precedential effect they shall have, or any other aspect of the holding with which it might disagree. Why do we not alter the amount of damages if we think the Court has given too little or to much? It would be no more absurd than for Congress to say, as this bill does, that Federal trial judges must follow our standards, and not the Court's standards, in deciding when the Court's decisions shall not be applied prospectively and when they should be applied retroactively.

Someone should call the Guinness Book of World Records. This clearly unconstitutional provision is going to be bounced quicker than any law Congress has every previously passed. Congress simply has no power to tell the Supreme Court what its decisions mean. They are a coequal branch of Government; or shall I say, it is a coequal branch of Government, and we do not have a power to overrule it in this manner.

Nor do we have the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system.

I might add, there were some people who were on the Constitution subcommittees of the respective two Judiciary Committees who allowed this to occur. To me, it is unbelievable that those committees would do that.

Section 204 of the habeas corpus title would encourage prisoners to file repetitious petitions simply on the hope that their petition may be heard by a new district judge—one who may decide the retroactivity issue differently than the previous judge. Under current law, the Supreme Court sets the rules and they apply nationwide.

They change this by a simple majority vote through a conference report. That is ridiculous; another reason I do not think anybody who believes in the rule of law should be voting for this conference report.

There is another important point to be made about retroactivity. If the Supreme Court cannot adopt new rules of criminal procedure that are prospective only, then it is certain the Court will be less likely to adopt new rules to control the abuses of State and local police which we all agree are essential. The Court's retroactivity doctrine is essential to the development and growth of our law of criminal procedure.

And they would overturn this retroactivity doctrine in the interest of liberal principles of law, principles that disregard the Constitution of the United States. And in the process, the Court, I think, would have a very tough time in the future deciding landmark criminal cases that might be in favor of the defendants who are unjustly convicted or accused.

The reason they will do that is because they are not going to allow us here, or the district courts there, to overrule their well-considered opinions, single judges in the district courts. That is unbelievable, but that is what the conference report does.

Consider the Miranda case, or Escobedo versus Illinois. Both of those cases announced unprecedented new rules of criminal procedure, but the Court specifically noted in each case that the rules were prospective only. They would apply to all cases on appeal but not to those that had already become final; meaning, of course, that Miranda violations would not provide a ground for relief on habeas corpus for criminals who were convicted before Miranda was decided. How could the Court have ruled otherwise? Had it not possessed the flexibility to make Miranda prospective only, the Court's ruling in that case would have opened an unimaginable floodgate of new demands for the release of State prisoners already in confinement, and they would have been released, a lot of them, because they could not have gotten the witnesses together, brought the evidence together, and retried those cases, many of which were old and long-gone cases. The Court would never have issued the Miranda opinion had it not possessed the authority to make its new rule prospective only. We should consider what other similar unforeseen consequences to the development of the law of criminal procedure in this country may lie in store if we adopt today this revolutionary restriction on the authority of the Supreme Court.

It is difficult, I admit, to explain what the retroactivity issue is all about. But imagine how much more difficult it will be to explain to our constituents why it is that infamous criminals will be receiving new trials decades after their convictions:

Does either Senator from Arizona know how he will be able satisfactorily to explain to the citizens of that State why he may have voted for a provision that would probably allow the Tison brothers to receive new trials?

How will the Senators from California explain the new trials that will be sought for Charles Manson and Sirhan Sirhan; for Juan Corona and the Hillside strangler—new trials that will be sought and, in many cases, mandated by this bill's provision that Supreme Court cases never before considered relevant to their trials now must be applied to give them new rights.

I know that I cannot now explain to my own constituents why it is that one man, William Andrews, has been on death row in Utah for 18 years. The whole point of starting this habeas debate was to shorten the ordeal for my State and for the victims of Andrews' unspeakable crimes. Now, instead of debating legislation to shorten the habeas process, we are actually considering evidence to double and triple it.

Section 204—the retroactivity provision—makes the Andrews prosecutors go back to square one. To start all over again.

This is not mere conjecture on my part. Just last year, Andrews' defense attorney announced that he would be asking a Federal court in Utah to free Andrews based on a recently decided 1991 Supreme Court case relating to the composition of juries.

The Supreme Court has already held that this 1991 decision does not apply to persons such as Andrews who were convicted in 1974. Therefore, we know that Andrews will not succeed in being freed from his death sentence on this basis—or do we?

If the bill before this body today is passed, then it is a whole new ball game for William Andrews; it is a whole new ball game for the Charles Mansons and Ted Bundys of the world. This bill tells them that their cases will never be over, so long as the Supreme Court continues to issue new opinions.

Before we get lost in the abstractions of habeas corpus law, before we wear out our hands wringing them over the supposed constitutional rights of vicious murderers, we need to remember the real consequences of serious criminal cases—the deaths, the shattered lives of those left behind, the families who must go on without their fathers or other loved ones.

Most importantly, for today, we must understand how these cases will continue to blight peoples' lives if the retroactivity provision of the conference report, section 204, becomes law.

William Andrews continues to appeal his sentence and has so far succeeded in delaying his execution for 17 years.

But today, at last, the end is in sight. But not if we are so unwise as to pass the conference report. If the retroactivity provision of this bill passes, the Andrews case will never end. Of that I am certain.

In 18 years of appeal, William Andrews has not raised one single meritorious issue on appeal. Not one. But the supporters of this bill now propose to allow Andrews to go back in time to

1978, when his criminal conviction became final, to let him see if he cannot find one more case, one more argument, one more chance to avoid his death sentence.

The proposed repeal of the Supreme Court's retroactivity cases is the greatest gift to prison inmates in America—and it applies to all State prisoners—that has ever been proposed.

That is why the President will veto it. That is why every attorney general of every State that I know of opposes it.

That is why on June 25, 1991, 16 of the elected State attorneys of the State of Florida wrote their Senators, urging them not to vote for any amendment that would repeal or restrict the Supreme Court decision in Teague versus Lane.

Only one habeas amendment considered by this body met the criteria for their support—it was the habeas title of S. 1241 that now lies in the trash bin of the Judiciary committee conference room, replaced by the entirely unacceptable House habeas provisions.

Reversing Teague versus Lane, as the conference report does, will be the greatest gift to prison inmates in years. Every conflict will immediately want to subscribe to U.S. Law Week, so that on Monday mornings he or she can look to see what new decisions have been handed down by the Supreme Court—what new case can be cited in a new habeas petition seeking release from jail and return to the streets.

This issue is not about whether State prisoners are to have one bite of the apple. Every convicted prisoner gets eight or nine bites of the apple on direct appeal and through State postconviction procedures before he even turns to Federal habeas.

But Federal habeas corpus is not about giving prisoners a second bite of the apple, it is about giving prisoners a 10th bite of the apple, even a 20th bite of the apple. If only the problem were as simple as a second bite of the apple.

William Andrews has already received 29 bites—but the crime bill conferees have decided to give him just as many chances to appeal again. Reversing the Supreme Court's retroactivity decisions will, in effect, allow William Andrews to start his appeals all over again.

I will allow convicted prisoners a 2d bite of the apple, and a 10th bite too. But I won't give them the whole orchard as the conference report would do.

Mr. President, since 1976, over 3,000 persons have been sentenced to death row, yet only slightly more than 100 of these sentences have been carried out. I am continuously asked by Utah citizens, in letters too numerous to count, what is going on here? What is wrong with our criminal justice system? Well, I think we all know what's wrong—it is the Federal habeas corpus system.

We all know what is wrong—we all know how to fix it. And if we do not know then we have the attorney generals, the prosecutors, and the law enforcement personnel of virtually every jurisdiction on record to tell us.

They all say one thing: Pass habeas reform, but do not overturn the good decisions of the Supreme Court. Do not let the House liberals overturn Teague versus Lane and reopen cases that have been closed for decades.

If any Senator today has any question about whether this conference report is truly a crime bill, they do not have to take my word on it. More importantly, they do not have to accept Senator BIDEN's judgment as to what this bill will do. Call your own State's attorney general and ask him or her. They know the issue, and I am confident as to what their response will be. They know this is no crime bill and that is what most will tell you—Democrat and Republican alike.

Just yesterday, the chairman of the Judiciary Committee directly refuted my assertion that this conference report arguably provides a basis for California inmate to bring a new habeas petition that he could not bring under current law—a habeas petition that has the sole purpose, if granted, of obtaining Manson's release from prison.

Senator BIDEN derided this point, and said that Manson would have no such right. But I understand today that the attorney general of California, Dan Lungren, is of the opinion that Manson might very well be entitled to claim the benefit of 25 years of Supreme Court decisions decided after his conviction became final, if we are so unwise as to pass this conference report. What is most important is this: No one—not even the chairman of the Judiciary Committee—can say for certain that Manson cannot file a new habeas petition under the authority of this conference report. I don't think the people of the State of California should have to accept that uncertainty.

So who should the people of the State of California believe? Myself, Senator BIDEN, or their own attorney general? More important, why should they be forced to accept any law that risks, in any degree, the release of Charles Manson.

When this crime debate began, I expressed the hope that I could someday finally tell the people of the State of Utah that Congress had acted to end the absurdity of endless 15- and 18-year appeals. Now, I realize that I may be faced with trying to explain the absolutely incomprehensible fact—and it is a fact—that the Senate of the United States is today being asked to create a system of legally guaranteed endless appeals—appeals that can last as long as 25 years, as in the Manson case or even as long as 50 years, as in the William Heirens case.

If the conference report becomes law, death by natural causes will provide the only limit on a prisoner's ability to relitigate his conviction and sentence. When we debated this subject early last year, I pointed out that one consequence of the Democratic crime bill was the reopening of the case of Richard Speck, convicted in 1966 of murdering eight Chicago nurses. Since that time, Speck has died in jail, before the Democrats had a chance to reopen his case to see if some subsequent Supreme Court decision could not be found to free him.

If it should happen that this conference report should ever become law, I will at least be thankful that it did not pass last year in time for Richard Speck to put the families of those eight innocent murdered nurses through the unspeakable ordeal of relitigating his case.

I hope, Mr. President, that at some time in the future I may finally provide a favorable answer to my constituents who ask what is wrong with the criminal justice system. I certainly hope that I do not have to tell them that Congress has actually acted to make things worse by passing the conference report. I know that I will never be able to explain that one to them.

Mr. President, I notice the distinguished Senator from Washington is here and would like to speak.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington [Mr. GORTON].

Mr. GORTON. Mr. President, first I should like to thank my distinguished friend and colleague from Utah for his courtesy to me in this regard, and to commend him on the detailed, technical, and highly accurate analysis of this bill and the reasons for which the conference report should be rejected.

Mr. President, my remarks will be somewhat shorter, but every bit as positive as those of the Senator from Utah.

This conference report is the result of a reprehensible process, a process which has flouted the rules of procedure of both Houses of Congress. The wisdom of those rules, rules which have been violated here, is shown by the substantive result which is before us in the form of this conference report, a so-called crime bill, which in the view of this Senator, inhibits the search for truth on the part of our criminal courts, obstructs justice, frees criminals on technicalities, adds complexity to an already overly complex Criminal Code, and adds to the use of technical defenses. In short, this proposal ignores the calls of our law enforcement agencies—and for that matter of our citizens—for safety, in order to provide aid and comfort to criminals and to provide more employment for lawyers.

Let me first speak briefly as to that process. This body debated amendments to the Criminal Code and requirements with respect to criminal procedure last July, over a period of

more than a week. That debate was spirited and serious. We voted on many amendments. This Senator was on the prevailing side of some of those amendments and on the losing side of others.

But no Member could say that the proposals were not seriously considered and debated, and that the final result did not express the will of the Senate, for better or for worse.

Even though I disagreed with some of the provisions of that bill, it did seem to me that it represented a significant step forward in law enforcement and in criminal procedures. Considerably later, months later, very close to the end of the first session of this Congress, the House passed a bill on the same subject. That bill differed from the Senate version in many respects. It included matters which were not included in the Senate bill. It omitted some matters which were included in the Senate bill. It did a better job on some subjects which were considered by both Houses and a poorer job on others. Nevertheless, it, too, represented a serious approach to the problem of criminal law enforcement in the administration of justice.

The conference committee between the two Houses, however, which met nominally shortly before the first session of this Congress, did not consider any of these differences. The members of the minority party from both Houses on the conference committee were called to no meeting, given no drafts, asked for no input, nor, incidentally, were members of the majority party in both Houses who had supported the respective bills passed by those two Houses. A bill written in secret and not presented to the conference committee until immediately before its adoption was rammed down the throats of conferees on both sides without any input into or votes in favor of on the part of members of the minority party in each House. That legislation totally disregarded the actions of either House of Congress with respect to the most important areas and questions at issue. Unlike the debate in either House, it took place behind closed doors and with only a handful of members.

Conference committees are appointed to deal with the differences between the two Houses and, generally speaking, should, under the rules, operate within the parameters of the extremes set by the debate in those two Houses. This bill is not the result of such a process. And that is at least one reason for its substantive shortcomings.

Now, what are those substantive shortcomings? The first is that it is totally misleading to call this a crime bill. It is a "criminal defendant's technical defense bill," properly entitled. While this bill lists 50 different crimes, including some not involving homicide, for which the death penalty is theoretically an appropriate sentence, in fact, the changes in procedures, the overturnings of Supreme Court decisions, will make it practically impossible to impose capital punishment in any case arising under this bill, either in the Federal courts or in State courts which have adopted or readopted capital punishment. It would have been far more honest and straightforward for the draftsmen of this bill to have admitted that they disliked capital punishment and to have attempted to prohibit it expressly by legislation, because that is indirectly what those draftsmen have accomplished.

Second, this bill not only does not streamline the habeas corpus proceedings, not only does not encourage some finality in criminal sentences, most particularly those in capital cases but in others as well, but actually encourages and calls for a more complex and a more unending habeas corpus set of procedures than we have at the present time. This bill overrules or overturns between 1 dozen and 15 decisions of the Supreme Court of the United States which have worked modestly toward the direction of finality in sentencing, modestly in the direction of some kind of limitation on collateral attacks on criminal decisions and sentences in State courts. This bill encourages frivolous appeals rather than to discourage them.

Third, Mr. President, while one of the liveliest debates here in the Senate and in the country as a whole relates to the exclusionary rule, which many Members, most on this side of the aisle and some on the other side of the aisle, would like to extend to good faith seizures of testimony in cases beyond those already authorized by the Supreme Court, this bill actually restricts and narrows the present good faith exception established by the Supreme Court, allows more guilty criminal defendants to go free in the single area of the law in which it is most certain that the barring of evidence from a criminal trial will effect a miscarriage of justice from the point of view of society as a whole.

I repeat, Mr. President, not only have we not expanded the good faith exception in this bill, we have actually narrowed it, making it more difficult for the administration of justice and more difficult to obtain convictions against the obviously guilty.

And, fourth and finally, this bill ignores salutary provisions of the Senate's bill. The conference report fails to include maximum penalties for recidivist rapists and child molesters. It fails to include such penalties despite the inclusion of such penalties in both the Senate and House versions of the original bill. Nor does the conference report contain important language from the Senate bill that provides for restitution to victims of rape, child molestation, and child sexual exploitation offenses. These omissions are ignored in the conference report. They are neither explained nor justified to the victims of such heinous crimes.

Mr. President, this is not a crime control bill. This is a bill opposed almost universally by law enforcement agencies, both at the levels of police and prosecuting attorneys across this country, both Federal and State. It is a bill designed to provide aid and comfort only for those who are engaged in the process of inhibiting the search for truth and justice and who are looking for a greater number of technical defenses to criminal charges than exists in an already overloaded criminal code at the present time.

This bill should not come to a final vote. This bill should not be sent to the President of the United States. This bill should be abandoned in the ashcan of history in the way which it deserves, and the Senate, regrettably, after all of its good work of last summer, should begin again to deal with the serious issues of crime and criminal law enforcement demanded by the citizens of our respective States and of the Nation as a whole.

Mr. KOHL. Mr. President, I rise today for two purposes: first, to urge my colleagues to vote for cloture on this strong, balanced anticrime package before the Senate and at the same time to commend Chairman BIDEN for his efforts on this package; and second, to reiterate my support for the conference provisions on the Brady bill. The conference report, like the Senate bill, combines the best elements of both the Brady and Staggers proposals. Unfortunately, the Republican approach omits the Brady bill entirely.

The sad truth is that violent crime has become a fact of life in American cities.

Indeed, it may be more dangerous to live in America than to serve our country in a foreign war. Fewer than 300 Americans died during the Persian Gulf conflict, more than 480 people were murdered last year in our Nation's capital.

Mr. President, no single legislative change will make our streets safer. A comprehensive approach is needed: more police; tougher laws; more certainty of punishment. But while there is no panacea for our crime problem, there is a crucial step we can take today to reduce the carnage. We can enact the provisions of the Senate-passed Brady bill—a mandatory background check and a uniform waiting period of 5 business days for anyone seeking to buy a handgun. Under our proposal, the waiting period would be in effect for at least 2½ years—and it could only be repealed in each State when an accurate instant check system is in place that would apply to all firearms purchases. In addition, the measure would authorize $100 million to help States upgrade their computerized criminal records.

In the United States, firearms violence is out of control. Guns were re-

sponsible for more than 10,000 murders in 1991—a 20-percent increase over 1987. Guns were used in more than 600,000 violent crimes last year. No State is immune to gun-related violence. Last year Wisconsin set a record with more than 230 senseless killings, and most of those murdered were killed with guns.

Mr. President, not all of these weapons were acquired illegally. Indeed, according to the Department of Justice, more than 20 percent of all criminals—roughly 120,000 people a year—obtain their handguns through licensed dealers. That is why the Brady bill is so vital—it would help keep guns out of the hands of criminals and drug traffickers.

But do not just take my word for it; look at who else supports it. Brady has been endorsed by every living former President—including President Reagan. It is supported by every major law enforcement organization. And even the NRA believes it makes sense. Its 1976 publication entitled "On Firearms Control" says:

> A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring weapons.

The Brady approach also enjoys wide support because it would not prevent anyone from buying a gun who is legally entitled to do so. A criminal records check would guarantee that lethal weapons were not sold to individuals with track records of dangerous behavior. A waiting period would ensure that we let people consumed by violent passion cool off. In short, Brady would create only a little inconvenience to law-abiding gun buyers, but it would help save many, many lives.

The Senate passed the Mitchell-Kohl-Gore amendment to Senator METZENBAUM'S Brady bill by a vote of 67–32. The provision which has come out of conference is essentially the Senate bill with technical corrections and a few minor changes. It is not a perfect proposal, nor is the crime bill itself perfect—a compromise seldom is. But we do the American people a disservice, Mr. President, when we allow the struggle for perfection to become the enemy of the good.

I strongly urge my colleagues to support the Brady bill and the conference report, and I commend Chairman BIDEN for crafting this omnibus proposal.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER (Mr. DODD). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I have been talking about the retroactivity provisions, the habeas corpus provisions, the exclusionary rule and other matters with regard to the conference report, and why it is not a good anticrime bill. Let me go into just a couple of good illustrations.

One was Ted Bundy, who, of course, had a Utah connection. We followed his career for a long time out there. I have to say we were happy to see justice finally carried out with regard to Ted Bundy. He was on death row for over 10 years before his sentence was finally carried out. It took only 1 week of a Florida court to try and convict him for the murder of Kimberly Leach. He had murdered all kinds of other people as well. One week to try and convict him, yet it took over 10 years for Federal courts to determine that his sentence should be carried out. That is under current habeas corpus law.

But this 10-year period was brief compared to the time Bundy would have served on death row had Senator BIDEN's retroactivity provision been in effect in 1988. Shortly before his execution, Bundy filed a final, unsuccessful habeas petition in the Federal district court.

His claim for relief was simple. A new Supreme Court case handed down the previous week allegedly gave him new rights with respect to the cross-examination of psychiatric witnesses.

The habeas petition was summarily denied in 1988 because the new Supreme Court decision was not given retroactive effect and no Federal trial judge in 1988 had jurisdiction to second guess the Supreme Court on this question.

That dismissal would not have been possible if the Biden retroactivity language became law. In other words, the law was that that decision only applied prospectively and Bundy was not able to avail himself of it. And the Supreme Court upheld it on that basis, and he went to capital punishment and met his just reward.

Had the conference report provision, been in effect, he would have had another right of Federal habeas corpus appeal and frankly would have availed himself of the benefit of that particular matter. And even though he was justly convicted, he very well could have had a new trial on that issue alone and had to go through it again, and the families of these victims would have to go through it again. That is what we are not considering around here, the families of victims, or the victims themselves, as we try to get rid of the death penalty, as we try to come up with these soft-on-crime provisions under the guise that they are tough on crime.

Let me tell you, we have been fighting for this for years, to try to get some strong anticriminal provisions into the Federal code.

The Biden habeas would have kept Bundy's case alive in another respect, because proposed section 2259(b)(2) makes the "ignorance or neglect of counsel" a valid reason for raising a new issue, years after trial.

Bundy, of course, acted as his own counsel. Thus, if the conference report had been the law for Bundy in 1988, Bundy would still be raising new arguments now that he accidentally, negligently, or ignorantly failed to raise at trial a decade earlier. And it would go on and on, as long as we had more and more Supreme Court decisions which we are going to have more and more of.

In affirming the dismissal of Bundy's last habeas petition, the Eleventh Circuit Court of Appeals cited the case of Murray versus Carrier, a 1986 case; seven times they cited it.

Murray versus Carrier is one of the two principal cases that this retroactivity provision is designed to reverse. No one denies that, by the way. I have to say you can look at the Bundy decision decided by the Eleventh Circuit Court of Appeals to ascertain that.

The conference report would change all of that. First, it would give the Ted Bundys of this world a chance to argue before Federal trial judges that they should be given the benefit of any new Supreme Court decision even though the Supreme Court has already concluded otherwise.

Second, it would allow prisoners to raise any new issue that they may have neglected to raise before. Whether the prisoner is right or wrong as to the applicability of the new case or new issue is entirely beside the point. Under the proposed new rule of nonfinality, which this conference report would put into criminal law, the death row inmate's essential purpose of delaying sentence will still be accomplished. In other words, every death row inmate would have automatic rights of appeal, henceforth and forever, if this so-called tough-on-crime provision, which we all know is soft on crime, becomes the law.

I am confident, Mr. President, that far more vicious murderers will die natural deaths of old age than face the consequences of their murders should this wrongheaded provision in the conference report become law. And Ted Bundy would still be alive had that been the law then, and so would every one of the other people who have been executed since.

Again, I will say, that I am not high on capital punishment for every capital case. I believe in capital punishment because it is a deterrent, but I also believe it should only be applied in the most heinous of cases. If you can find one much more heinous than Ted Bundy, or should I say cases more heinous than Ted Bundy's, then I think it should apply.

Let me just talk about our Utah prisoner. I talked about William Andrews before. He committed his crime 17

years ago. He was sentenced to death in the same year. Nobody doubts that he did the murders, but despite 27 separate appeals of his death sentence, he still has not been executed.

On April 2, 1974, two men, Pierre Selby and William Andrews, entered a hi-fi shop in Ogden, UT, a city north of Salt Lake City, the second-largest city in the State, and approached the clerk behind the counter as if they were just customers. When these 2 fled hours later, they left five people dead.

Before committing the murders, Andrews and Selby first tortured their bound and helpless victims, three unsuspecting teenagers who had just happened to be shopping in this very popular store were forced to drink cups of poisonous liquid drain cleaner, Drano, if you will. This is what these fellows did. The father of one of these young people was even forced to pour the deadly Drano down the throat of his own son. When he refused to do so, Selby wrapped an electrical cord around his throat and attempted to strangle him to death. Then while the father struggled for breath, Selby repeatedly kicked a sharp ballpoint pen deep into his ear and destroyed the eardrum in his ear.

Then Andrews and Selby finished methodically. They shot each of their bound victims one by one in the head. Michelle Ainsley, however, was not even granted a swift end to her tortures. Before she was fatally shot, Selby dragged her into the back room and raped her.

We simply cannot begin to imagine the agony of mothers and fathers, wives and husbands, brothers and sisters whose lives were permanently marred, maybe even destroyed, by Pierre Selby and William Andrews. We cannot begin to imagine the permanent damage done to countless lives.

I personally know many wonderful people in Ogden, UT, whose lives are still not completely healed more than 17 years later from this heinous offense. The tragedy in this case is the heinous murderers of innocent victims, five shoppers who were tortured to death.

Before we get lost in abstractions of habeas corpus law, before we wear out our hands wringing them over the supposed constitutional rights of vicious murderers, we need to understand the real consequences of this case, the deaths, the shattered lives of those left behind. The families who have to go on without a father. Most importantly for today, we must understand how this case will be allowed to continue to blight peoples' lives with the retroactivity provisions if the conference report section 1104 become law.

William Andrews continues to appeal his sentence, and has so far succeeded in delaying his execution for 17 years.

But today, at last, the end is in sight, but not if we are so unwise as to pass the conference report. If the retroactivity provision of this conference report passes, the Andrews case will never end, of that I am certain.

In 17 years of appeal, William Andrews has not raised one single meritorious issue on appeal. Not one. But the supporters of this bill now propose to allow Andrews to go back in time to 1978 when his criminal conviction became final to let him see if he cannot find one more case, one more argument, one more chance to avoid his death sentence.

The suppose repeal of the Supreme Court's retroactivity cases is the greatest gift to prison inmates in American and applies to all, not just some, all State prisoners. And I have to say it is a terrible provision.

That is why the president will veto this bill. It is one of the reasons. That is why every attorney general of every State that I know of opposes it.

That is why the president of the Florida Prosecuting Attorneys Association, Joseph D'Alessandro, wrote us last summer to oppose the Senate amendment that contains the retroactivity now embodied in the conference report.

That is why the National District Attorney's Association opposes the principal provision of the conference report.

That is why on June 25, 1991, 16 of the elected State attorneys of the State of Florida wrote their Senators, urging them not to vote for any amendment that would repeal or restrict the Supreme Court decision in *Teague* versus *Lane*. Those 16 prosecutors constitute all of the circuit prosecutors in Florida, except three who could not be contacted on such short notice. They were unanimous in their view.

Only one habeas amendment considered by this body met the criteria for their support. It was the habeas title of S. 1241 that now lies in the trash bin of the Judiciary Committee conference room, replaced by the entirely unacceptable House habeas provisions of the liberal members of the House and Senate Judiciary Committees in spite of the fact that the Senate voted overwhelmingly to change these matters.

Reversing *Teague* versus *Lane*, as the conference report does, will be the greatest gift to prison inmates in years. Every convict will immediately want to subscribe to U.S. Law Week, so that on Monday mornings he or she can look to see what new decisions have been handed down by the Supreme Court: What new case can be cited in a new habeas petition seeking release from jail and return to the streets.

This issue is not about whether State prisoners are to have "one bite of the apple." Every convicted prisoner gets eight or nine bites of the apple on direct appeal and through State postconviction procedures before he even turns to Federal habeas.

But Federal habeas corpus is not about giving prisoners a second bite of the apple, it is about giving prisoners a 10th bite of the apple, even a 20th bite of the apple. If only the problem were as simple as a second bite of the apple.

William Andrews has already received 27 bites, but the crime bill conferees have decided to give him just as many chances to appeal again. Reversing the Supreme Court's retroactivity decisions will, in effect, allow William Andrews to start his appeals all over again.

I will allow convicted prisoners a second bite of the apple, and a 10th bite, too. But I will not give them the whole orchard, as the conference report would do.

Mr. President, since 1976, over 3,000 persons have been sentenced to death row, yet only slighly more than 100 of these sentences have been carried out. I am continuously asked by Utah citizens, in letters too numerous to count, what is going on here? What is wrong with our criminal justice system? Well, I think we all know what is wrong—it's the Federal habeas corpus system.

We all know what is wrong; we all know how to fix it. And if we do not know, then we have the attorneys general, the prosecutors, and the law enforcement personnel of virtually every jurisdiction on record to tell us.

This bill would be the worst thing for law enforcement you could have. Many of the things they claim are tough on crime are without other provisions that let criminals off that are in this bill. They give, on the one hand, tough criminal provisions and take them away on the other, and we think we should not take them away. The bill filed by Senator THURMOND makes them tough and does not take them away.

I have to say that all of these prosecutors, all of these attorneys general, all of these law enforcement personnel who are against this conference report all say one thing: Habeas reform, but do not overturn the good decisions of the Supreme Court. Do not let the House and Senate liberals overturn *Teague* versus *Lane* and reopen cases that have been closed for decades.

If any Senator today has any question about whether this conference report is truly a crime bill, they do not have to take my word on it. Call your own State's attorney general and ask him or her. They know the issue, and I am confident as to what their response will be. They know this is no crime bill and that is what most will tell you—Democrat and Republican alike.

Yet it is being passed off as a tough-on-crime bill because it has lots of money in it. It does have good criminal provisions but they cannot be enforced with these types of laws that they like on the other side.

I hope, Mr. President, that at some time in the future I may finally pro-

vide a favorable answer to my constituents who ask what is wrong with the criminal justice system. I hope I can someday finally tell them that Congress has acted to end the absurdity of endless 15- and 18-year appeals.

I certainly hope that I do not have to tell them that Congress has actually acted to make things worse by passing the conference report. I know that I will never be able to explain that one to them.

So I plan to do everything I can to stop it, and I think it ought to be stopped.

Yesterday, the distinguished Senator from Delaware [Mr. BIDEN] denied that the conference report would have any effect on the case of California murderer Charles Manson. I took a different view, and I think most people who have studied this carefully will take a different view. I said we could not say for sure whether Manson could be released if he could find some favorable decision to cite—some decisions decided in the 25 years since his conviction. If nothing else, the conference report gives Manson the incentive to try a new habeas petition; he has nothing to lose by doing so if this conference report becomes the law.

Earlier today, Senator SEYMOUR expressed his reluctance to accept the risks that the conference report might contain the key for Charles Manson to open his jailhouse door. Senator SEYMOUR made the sensible suggestion that unless this Senate was unanimously convinced that the conference report does not reopen long closed cases, we could not responsibly vote to approve the conference report. I certainly agree with that.

In addition, since I began my remarks here today, I have received a letter from the attorney general of California who knows where Manson is residing right now, who knows about his prison sentence, who knows about the murders he committed, who knows what an insane, worthless human being he is.

I would like to share with my colleagues the legal opinion of the attorney general of the State of California, Attorney General Lungren. This is dated March 5, 1992:

STATE OF CALIFORNIA,
Sacramento, CA, March 5, 1992.

Hon. ORRIN G. HATCH,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: I understand that the question has arisen during the crime bill debate whether the retroactivity provisions in the conference report would allow prisoners such as Charles Manson to file federal habeas petitions based upon the definition of "new rules" in the bill.

My department has concluded that the sweeping retroactivity provisions included in the bill would not foreclose any capital or non-capital prisoner in California from attempting to challenge his conviction based upon new rules developed after the final conviction. In this manner, the conference report overturns current law; promotes repetitious litigation; and destroys the interest in finality obtained under the Teague doctrine. The problem with the conference report is that its definition of a "new rule" is so restrictive that hardly any decision would qualify as a "new rule." Thus, virtually any federal court decision could be applied retroactively. The breadth of the retroactivity provision is not limited to capital cases, but provides new potential avenues of relief for any prisoner—whether he is a mass murderer, rapist, or bank robber. For this reason, the bill may be more appropriately entitled the Prisoner Relief Act.

Therefore, while I am reluctant to suggest to course of action that any particular prisoner might take, I can unequivocally state that the conference report has the potential to provide every individual in the California prison system, including some of the most notorious murderers in our nation's history, an opportunity to pursue fresh rounds of "new rule" litigation. The conference report clearly overturns current law and undermines the Teague doctrine. The importance of the Teague doctrine has been demonstrated in recent cases, including the latest habeas petition brought by Robert Alton Harris, who brutally murdered two San Diego teenagers in 1978 and who confessed seven times. There, the Teague doctrine served as a bar to new claims based upon precedent established after his final conviction was upheld in 1981. Similarly, Horace Butler, who raped and murdered Pamela Lane near Charleston, South Carolina, in 1988 and who also confessed to the murder, was barred from bringing new claims based upon "new rules" developed after his conviction had become final. Under the bill, Butler, Harris, and a host of other convicted murderers could bring yet more claims based on new rules.

The bottom line is that it is simply not worth taking the risk to provide convicted prisoners new opportunities for litigation that are not available under current law. Instead, the Senate should reject the conference report and adopt legislation which will support the interests of law enforcement, provide finality of judgment, and take the interests of victims and their families into account.

Sincerely,

DANIEL E. LUNGREN,
Attorney General.

P.S.—Perhaps the most offensive aspect of this entire debate on the Conference Committee's so-called "crime bill" is the almost total disregard of its impact on crime victims and their families. Isn't it about time that the "world's greatest deliberative body" begin to view the criminal justice system from the perspective of the victims of crime and their families rather than that of criminals convicted and sentenced for society's worst crimes?

I think that is a whale of a letter from the attorney general of the largest populated State in the Union—35 million people. I think he is making it very clear that not only convicted murderers would have a right to assert new rules every time the Supreme Court rules, but everybody in the prison system in California and every other prison system throughout this country would have that right. It would throw the courts into chaos while at the same time making unenforceable most, if not all, capital punishments that are on record.

Need I repeat at this point the well-known epigram that "justice delayed is justice denied"?

Our colleague from Alabama, Senator HEFLIN, has spoken eloquently on this subject, former Supreme Court Chief Justice in Alabama. He said:

> There is no doubt that the problems of finality and integrity in State court judgments * * * have an acute effect on the enforcement of our criminal law. This is not a recent phenomenon. The Bible well describes the tendencies of human nature when it states in Ecclesiastes 8:11: "Because sentence against an evil work is not executed speedily, the heart of the sons of men is fully set to do evil."

As the Bible so often teaches us, in the area of crime and punishment, the fundamental issues of justice do not change.

Mr. President, I have a lot more to say but I understand my distinguished colleague from Arizona is here and he would like to have some time. I am glad to yield the floor at this point.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I thank my friend from Utah.

Though I find myself in agreement with the distinguished Senator from Utah so many times, I have to say that I do not agree with the Senator's statements here that this conference report is soft on crime, and that we are going to permit people to get out of jail. Even the distinguished citation that the Senator uses from the attorney general of California, Mr. Lungren, is of great interest. Mr. Lungren served in the House of Representatives for I think 10 years, if I am not mistaken. I served on conference committees with him.

We know what is happening here. This has become a political problem, in my judgment, a political problem for those who do not want to see a crime bill passed today, who feel that we should not have a crime bill that is going to appear to be a crime bill that the President has not put his stamp on. I submit, Mr. President, that is the wrong way to approach the problem of ever-increasing crime, violence, and lawlessness that is going on in this country, in this city, in my State of Arizona.

So I rise in support of the conference report. It is one of the most comprehensive crime packages in recent history. I have seen a lot of crime bills pass here in the short 15 years that I have been around, and this is the toughest one that we have ever had. Our House colleagues have passed this measure, and we should also adopt it.

So it is here, folks. It is ready to be launched. There were over 24,000 murders in the United States last year. This country is under siege, and it is time we do something about it.

We have an opportunity to do something about it today or tomorrow when

the cloture vote comes about. Yet we find our Republican colleagues are complaining that their provisions were stripped from the conference report. Well, so were mine.

This is not the bill that I would have introduced and that I would like to have seen passed as the national crime bill for 1992. But it is interesting to note that the bulk of this bill has the tools that the law enforcement people want to apply against the criminals of this country.

I had an assault weapons provision in this bill that passed two times in this body, once very narrowly, and the next time it was unanimous without even a contested rollcall vote.

I feel very strongly about that bill. I argued here that maybe this assault weapons provision would really do something to alter the use of these high-velocity weapons in the killing of Americans in our cities and throughout our country, and in the use against law enforcement.

So we debated it here for days. It came down to a very close vote. It passed by two votes and yet it was stripped out of the conference report. I was very disappointed.

So what do you do when you lose something in the conference report that you feel very strongly about? Do you pick up your bag, go home, and say, well, that is it; if I do not get 100 percent of what I want in this bill, then I am going to filibuster it; I am going to see that law enforcement does not have the provisions to take on criminal elements?

I would like to have that assault weapons ban in the bill.

It also had a provision in the bill that I did not support. Yet, I went along with the Senate bill. It had the so-called Brady bill, a awaiting period that I had opposed consistently because I did not think the Federal Government should impose that. I voted against that on the Senate floor.

So I had an opportunity under this process. We all know how it works so I do not even want to go into any of the details.

I had an opportunity to talk against the bill, the Brady bill. I had an opportunity to vote against it. It was passed. And the full bill was passed with my assault weapon provision, with the Brady bill, and we went to conference. And the conference report took out the assault weapon provision.

Did I pick up my bag and go home and say never again? No. Are we going to leave law enforcement stranded? Are we going to let the public go ahead, and be murdered and assaulted? Are we just not going to do anything else because this provision was not in there?

I am not happy with the habeas corpus provision in this conference report. It is not restrictive enough. I expressed my views very clearly on the floor. I voted for the President's proposal that was offered by the distinguished Senator from South Carolina. We did succeed. We did pass that version, which was tougher than the one that is in the bill before us. But in the conference we compromised because we got—I will get to it shortly—53 death penalties. That is something I have fought for around here for 15 years—to see the death penalty reimposed on the Federal level.

I also supported the exclusionary rule that was offered by Senator THURMOND, but that provision did not make it into the conference. We lost that on the floor of the Senate. Senator RUDMAN, the distinguished Senator from New Hampshire, led the effort against the Thurmond provision. He prevailed. I was not happy about that. I did not like that because I had seen the exclusionary rule used firsthand as a prosecutor before I came to this body, both in the Federal courts, and in the State courts. Indeed, I felt that we had to change that. So that was not available as a tool for the defense to throw out the whole case.

The Republicans have resurrected the Thurmond exclusionary rule provision as one of the provisions that justify voting against this bipartisan, I think, effort. And they are making it a partisan effort. The public is going to see that if they have not already.

We lost the cloture vote to bring this up for a vote right before we adjourned in October. We lost it because the Republicans would not vote for this conference report.

The habeas corpus and the exclusionary provisions in the bill are not just the way I would like to see them, but I am willing to live with that, as is every law enforcement organization in America.

So we are not here offering a crime bill that is soft on crime and because the attorney general of California says he does not like it, and a few other prosecutors say we do not like it because it does not have habeas corpus or the exclusionary rule. We have heard time and time again about what law enforcement thinks.

What about the people that are on the frontline on a day-to-day basis protecting you and me and the rest of the citizens? The Fraternal Order of Police, the largest organization of police officers, supports this and says, as the distinguished Senator from Delaware said yesterday how important it was to them, that it was the most important crime bill in recent memory.

The National Association of Police Organizations, the International Association of Chiefs of Police, the International Brotherhood of Police Officers, and the National Sheriffs Association, just to name a few organizations that say give us these tools so that we can do something today, so we do not have to wait and keep getting cut down by the criminal elements in this country.

The conference report provides the largest ever expansion of the Federal death penalty. It will cover 53 offenses that are not covered today. Tell me that is soft on crime? Hogwash. You could not get any tougher on crime. You are going to have the death penalty on murder of Federal law enforcement officers, that you do not have today; murder in the course of a rape; murder for hire; drive-by shooting; death penalty on drug kingpins. Is that tough on crime? Of course it is tough on crime.

It converts 10 closed military bases today into boot camps for youthful offenders, an approach that almost everybody says let us try. This is an effort to do something to make people feel a responsibility once they have been convicted of some crime.

It authorizes 8,000 new prison cells to hold the drug criminals in this country today. Is that tough on crime? Of course, it is. It directs $1 billion to the State and local law enforcement. That is what we need—more cooperation, more funds on the local level to work with the Federal authorities; and this bill does it.

A new effort to combat gang violence is included here. There are new penalties for terrorist acts, and increases in existing penalties for repeat drug offenses, assaults, manslaughter, and crimes against the elderly. Is that tough on crime, to get tough on people who commit and prey on the elderly? That is not soft on crime; it is tough. You are darn right, it is tough.

If this bill becomes law and you prey on the elderly or you commit some of the crimes that are in here, you are going to die if you are convicted of those crimes.

The bill expands aid to crime victims and permits them to speak at the sentencing of their assailants. How many times have any of you heard from your constituents about the need of somebody paying attention to the victims of the crime? Well, here the victim is going to get an opportunity, if this bill passes, to come and tell their story before the sentencing judge imposes sentence. If it is relevant, fine; if it is not, fine. At least, the victim will be considered, perhaps for the first time. That, to me, is getting very tough on crime.

Unlike the President's recently released budget, this proposal does something for law enforcement. It equips and trains 500 new border patrol officers to halt the flow of drugs across the Southwest border. Coming from that part of the country, there is nothing more prominent in our problems right now with drugs in the State of Arizona than the fact that the border patrol has gone down in the last 3 years in personnel on the border from 305 to 249. The last time it was at 305 was in an election year.

Four years ago, the administration pushed in some more border patrol.

And now we are talking about adding a few because it is an election year. This bill adds them permanently, and adds 500, not the 8, that are going to come into Arizona under the President's budget.

This conference report authorizes hundreds of new FBI, DEA, and U.S. attorneys to combat the crimes resulting from the drug epidemic. I know in my State, the U.S. attorneys cannot do all the work with the personnel they have.

My Republican colleagues have introduced their own new and improved crime bill this week. By their own admission, their bill contains virtually everything in the conference report except the few items that they have articulated here.

They have come a long way. Now they agree with the provisions I have mentioned above. Indeed, now they have some of the provisions that I introduced are in there: The National Commission to Support Law Enforcement is in their bill. I would like to thank them for putting it in there. The sports gaming lottery bill is in there; I thank them for putting it in there, just to name a few. All of the death penalties in this conference report are in that Republican bill that has been introduced.

But my Republican colleagues will not accept the conference report because of provisions that many of them even voted for on the Senate floor. That crime bill that did pass this body with the habeas corpus provision, which they supported, and is modified, passed with 26 Republicans. Now we are going to see how many of those Republicans will stand up tomorrow when we have the cloture vote and support passage of a final crime bill that does deal with habeas corpus; not just perfectly the way I want it, but does deal with habeas corpus and adds all these other very important provisions.

They want to play politics with this conference report. Why? I do not know. With that approach, we will never have a crime bill, and our law enforcement people will not be prepared. Who gets hurt? The American public.

Why are our Republican colleagues opposing this bill? It is because they say it is "soft on crime." If anybody wants to talk about being soft on crime, I sure hope my colleagues have taken the time to look at what this administration is doing right now in south Florida.

What I am talking about is simply this. I am talking about the sweetheart plea bargains and agreements that the administration has been handing out, one after another, to some of the most notorious drug kingpins ever arrested and prosecuted in this country.

Why are they treating these drug kingpins like some model citizens? Because their past relationship with Manuel Noriega, the former dictator of Panama, has come back to haunt this administration, and handing out these ridiculous deals and plea bargains as their last resort to convict them.

Well, I hope they convict them. If they cannot convict him without handing out short sentences to some of the biggest drug dealers in the world, then there is something wrong with the administration's policy. This administration's policy is now what is soft on crime. For my colleagues and those in the American public who do not know about this policy, let me give a few examples, illustrated by this chart to my right.

The group the prosecution assembled in the Noriega trial, the group doing it, and the people who are being given these highly visible deals on plea bargaining, sounds like a Who's Who in criminal activities and in drug dealings in the Federal prison system.

Let me tell you about Colonel Del Cid, this gentleman right here, the former Noriega bagman. He was facing 70 years in jail on four courts of drug trafficking and racketeering. Noriega prosecutors dropped three of those counts and recommended a maximum of 19 years instead of the 70 years that he would have received. They also promised not to deport him after he gets out after 19 years. We do not know when he will be on parole.

Ricardo Bilonick had been hunted for years by this country, by our law enforcement officers, for bringing in a 2,100-pound shipment of cocaine in 1984. He should have served 60 years; that is what he should have received when they convicted him. Yet, with parole, he will be out in 7 years, maybe less. Shockingly, our Government has promised to urge other countries that he not be prosecuted. He is a witness in the Noriega case.

Nevertheless, the biggest travesty of all is the sweetheart deal handed down to Carlos Lehder by the Bush administration. Lehder, this person right here, one of the founding members of the famous Colombian drug cartel, and an admitted admirer of Adolf Hitler, is the most notorious cocaine trafficker in the world ever apprehended by anybody.

More than any other individual, Carlos Lehder was responsible for the development, growth, and supply of the cocaine market in the United States. At one time, Lehder was responsible—and attributed by our law enforcement people—for 80 percent of the cocaine that entered the United States.

He is a vicious criminal who is responsible for thousands of deaths in Colombia. The tens of thousands of pounds of cocaine and other drugs he has smuggled into this country has caused unprecedented violence and murder in the streets of America, and created millions of drug addicts and crack babies in our country, and who knows what other countries.

In what was considered the most important drug-trafficking trial in history, Lehder, this person, was convicted in 1988, and sentenced to life imprisonment plus 135 years. That is a pretty good sentence—and I compliment the administration—if they just let it stand.

So how did the narcoterrorist end up testifying for our Government against Noriega? Lehder himself was lobbying for a spot on the Noriega trial as part of the prosecution. At the Noriega trial, Lehder himself stated that he was testifying in behalf of the Government against Noriega in the hopes of winning a reduced sentence that would allow him to return to Colombia, to his home country.

He was transferred out of the country's highest security prison, the Federal prison in Marion, IL. The Justice Department claims that was for personal safety reasons. I have been to that prison. You are safe there. I can tell you, nobody is going to touch you if that is where they put you. How can moving him out of that make it any more secure? The worst thing is he is going to be out on the street before we know it. And he is going to get a reduced sentence. Mark my word, it is coming down, and we will see it here shortly after the end of the trial with Noriega.

We also know that the administration went a long way with Mr. Lehder's wishes to bring eight members of his family into the United States under the Protective Witness Program. I wonder how much that is costing the American taxpayer. At one time the motto of Colombia drug Lords was that "we prefer a grave in Colombia to a jail in the United States." With the new Bush policy on plea bargain agreements, Colombia drug traffickers are requesting deals with this country, "Let me be a witness against whoever you are prosecuting because I know you will let me out of jail. You will let me not be prosecuted by other countries."

Colombia drug lord Pablo Escobar, who surrendered to the Colombian Government in June, is now sitting in his private luxurious prison outside his home town. He continues to run his cocaine empire from within. In late December, Escobar proposed his own deal to the U.S. Government. He wanted to provide evidence against Noriega in exchange for handling over all the evidence we have against him. I am surprised our Government did not do it. Maybe six or seven drug kingpins was just enough that they could swallow and they could not swallow one more.

It was once a stated policy of the administration to prosecute drug kingpins—Carlos Lehder, Escobar, Del Cid, Bilonick, any of the other ones—to the fullest extent possible. That is the kind of policy that I call tough on crime. Clearly, that policy has been replaced by a misguided policy that caters to the most notorious drug traffickers in the world.

Earlier today, my good friend from Mississippi, I understand, claimed that the conference report coddled criminals. I ask my Republican colleagues to explain this policy that I just laid out if you want to talk about coddling criminals. This policy is a Prisoner Protection Act for those who have been convicted of bringing drugs into this country. That is what we have today going on with this Justice Department and the Bush administration.

Last November, we listened to President Bush threaten to veto this conference report. Here we are again today listening to the rhetoric from our good colleagues that this is soft on crime. That is nonsense, and they know it. Yet, under the conference report, if we get to pass it and it becomes the law of this land, there would be no more opportunity for bargaining with the Carlos Lehders or the Pablo Escobars of this world. They would be gone. You know why? Because they would have received the death penalty under these types of convictions right here. He would not be able to bargain for anything.

I hope the American public sees through what is going on here and, indeed, that we are prepared to walk that plank. We, who are offering the conference report, do not claim that it has everything in it, but we can stand up with pride saying these are the tools that American law enforcement want, that the American public wants and that they deserve, and it is about time we move forward and get this behind us.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Alabama.

TRIBUTE TO HENRY TURNER

Mr. HEFLIN. Mr. President, I want to talk about a public servant, a law enforcement officer. An Alabama journalist once wrote that, fortunately, Washington, DC, is full of those public servants who still get the shivers when the curtain goes up on another day of democracy. They are not jaded or pompous or self-important—not full of high-toned speeches or bombast. Of course, they work for money, but sometimes you get the feeling they might work for more than that. Most of my colleagues know one of these public servants the journalist wrote about to be Officer Henry L. Turner, a long-time member of the Capitol Police Department's fearless five Senate door contingent. I am also fortunate to know this Alabama native, who retired from the force at the end of last month after 20 years of service, as a dear friend.

Henry Turner literally traveled to the ends of the Earth on his journey from his home on the South Side of Birmingham, Alabama, to the corridors of the Nation's Capitol Building. As a young black man coming of age during the late 1940's and early 1950's, he discovered the harsh realities of racial discrimination when he was passed over for a job that he was eminently qualified for. Joining the Army in 1950, he served in Korea with the segregated 24th Infantry Regiment. Six months after his enlistment, Henry found himself in Japan recovering from bullet wounds to his side and legs. He was awarded the Bronze Star and Purple Heart for his bravery in battle.

He made the Army his home and career for the next 20 years, serving in Germany, Japan, Vietnam, Korea, and throughout the United States, retiring as a sergeant first class. A chance encounter with a Capitol policeman led Henry to the job he loved for so many years. He was on a Washington tour when spotted a man he thought he knew. Although the man turned out to be someone else, he was a retired serviceman as well. He told Henry, "If you're retired, you can get up here, too."

From the time he joined the Capitol Police Department in January 1972, Henry had his eye on the Senate door post detail, known as the fearless five. When he got one of the jobs 2 years later, he felt that he had secured the plum position on the force. "This job goes beyond my wildest dreams in terms of meeting people. When the Senate is in session you get a chance to see so much," he said. "I consider it an honor to work here."

During his tenure on the police force, Henry became somewhat of a "good will ambassador-at-large," constantly showing groups around the Capitol, pointing out historical places and artifacts, telling political anecdotes, and answering provocative questions about our history. He became an authority on the legacy of the building itself and on the behind-the-scenes rough and tumble of the legislative process. His files are brimming with dozens of gracious letters of thanks and appreciation from those he has assisted over the years.

The late Carter Manasco, a former Alabama Congressman and long-time public relations executive, once said that Henry was the best ambassador for Alabama there was in Washington; the people he worked with said that since he seemed to always be showing people from his State around, he must be running for Senator himself. Having successfully earned the title of "Alabama Ambassador Extraordinaire," Henry might yet come to prove his former colleagues on the police force right by declaring his candidacy for the U.S. Senate.

Meanwhile, I am proud and thankful to have Henry volunteering in my office part-time in an effort to continue these legendary good will missions for visitors from our State. His warm personality, keen sense of humor, shrewd political acumen, deep sense of history, and infectious laugh all come together to end a much welcomed and unique dynamic to the hectic routine of a Senate office.

Yes, Mr. President, Henry Turner did come a long way after being passed over for a job at that tire-recapping shop all those years ago. Just about all of us in this Chamber, and dozens of our former colleagues, know him by name, and he has met every President since Richard Nixon. He used to carry the key to then-Vice President Bush's ceremonial office right in his pocket.

About 10 years ago, Henry remarked to a news reporter from his hometown that the security and prosperity he found in life was not something he envisioned for himself when growing up in Birmingham. He said,

> I never dreamed I'd be buying a car. I wasn't raised with that. We weren't really poor, but we never had a whole lot at one time. Who would have thought * * * that I'd be up here opening the door to let the U.S. Senate come in to go to work?

Mr. President, I congratulate Henry Turner on his retirement and commend him for this many years of impeccable service and untiring commitment to this body, his country, and his State. I wish Henry all the best for a long, happy, and healthy retirement, one that his wife Gertha, and their son Adrian, who interns in my office periodically, might enjoy with him to its fullest. I ask unanimous consent that a 1986 news article on Henry be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STOP WHEN HENRY SAYS

(By Randy Quarles)

WASHINGTON.—Birmingham native Henry L. Turner occasionally harks back to his service as an Army sergeant to call cadence, but these days he gives his marching orders to reporters in the U.S. Capitol.

Turner, 57, and four other Capitol Police officers—they're known as the "Fearless Five"—are assigned to guard the second-floor hallway and reception room outside the Senate chamber.

When the Senate is acting on controversial topics, reporters and lobbyists swarm around the Fearless Five's domain to buttonhole arriving or departing lawmakers. That's when Turner and his colleagues really swing into action.

"The most difficult part of the job, whenever there is a roll-call vote, is in keeping the press and lobbyists out of the way so the senators can get in and vote," explained Turner recently.

So Turner has worked out a simple but effective system with the regular Capitol Hill journalists to maintain an open route for senators:

He says, "Hup, two, three, four," and the reporters move.

They know that, despite his broad smile, he means business.

"But I like the press," said Turner during an interview in the Senate Press Gallery, one floor above his usual stomping grounds.

And the press apparently likes Turner, too. During the interview, reporters from the New York Times and other outlets paused to say hello and banter with him.

"They've got a hard job," said Turner, as one of the reporters left after ribbing him for being in the press gallery. He's never had any serious problems with reporters, he said, and usually no one's feathers get ruffled.

Sometimes, though, tempers do flare, Turner said. Lowering his voice, he nodded toward a woman seated at one end of the press room.

"That lady got *mad* yesterday," he said, chuckling.

Turner came to Washington after 21 years in the Army, from which he retired as a sergeant first class with a Purple Heart from the Korean War. He and his wife of 20 years, Gertha, now live in nearby Riverdale, Md., with their 14-year-old son, Adrian.

He has spent most of his 14 years with the Capitol Police outside the Senate chamber, one of the force's most coveted jobs. He reports to work each day an hour before the Senate goes into session, and generally stays as long as the lawmakers do—although if the session goes around the clock, he is spelled late in the evening for a four-hour respite.

"Our primary responsibility is to protect members of Congress and to assist them and their staffs, always keeping security in mind," said Turner.

Security around the Capitol in general has tightened noticeably in recent years, particularly since a bomb exploded late one night in 1983 a few feet from the then-empty Senate chamber. No one was injured in the blast.

Nevertheless, Turner said his routine has remained pretty much the same, because "in our area, security always has been tight."

"We do more work here than anyone else on the Hill, as far as police work," he said with a touch of pride.

One of the job's bonuses for Turner is the opportunity to meet some of the nation's most powerful men and women. He has known every senator who has served since 1972—something few can say.

"I really think it's great when you can stand there and see them come in," said Turner. And when he reads in the newspaper about one of them, he said, "I can associate with such a guy—I know him."

Sen. Howell T. Heflin, D-Ala., of Tuscumbia, praised Turner's dedication to his job.

"He is extremely accommodating and helpful to all the senators," said Heflin. "If there was a poll of all the senators, Henry Turner would rank No. 1 as the most accommodating.

"Besides, he's a good policeman, and that in itself is a high accolade."

Turner frequently goes above and beyond the call of duty to help his fellow Alabamians, too, Heflin continued.

Both Heflin and Sen. Jeremiah Denton, R-Ala., of Mobile, sometimes refer their visitors to Turner for a special tour of the Capitol during his lunch break or other off-duty time.

"He's extremely knowledgeable about the history of the Capitol building and the United States Senate," said Heflin. "Those Alabamians privileged to have had a "Turner Tour" sing his praises to the highest."

Turner would't describe himself as an authority about the Capitol. However, he said, "you get more from me than you do from the regular tour guides."

"I'm a lover of people, anyway," he said. "The more people that are around me, the better it is for me."

The Turners are thinking about retiring to Alabama in another few years, possibly to a small tract of land they own near Opelika. Or they may buy a place with enough land for a good garden somewhere in the Huntsville vicinity, to be near Redstone Arsenal's Army hospital and other services for military retirees, Turner said.

Until then, he wants to stay at the door of the Senate.

I love it. I love my work," said Turner.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida.

Mr. MACK. Thank you, Mr. President.

I ask unanimous consent to address the Senate as if in morning business for not to exceed 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

CAPITAL GAINS

Mr. MACK. Mr. President, this recession has made it clear to most Members of Congress—that changes in the tax treatment of capital gains are necessary. I have argued for a long time that a lower capital gains tax rate will create jobs, stimulate new business growth, and boost capital formation. Probably no single policy we can initiate would spur economic growth more than a cut in the capital gains tax rate.

Yet the debate over capital gains has been inflamed by partisan political maneuvering. Even though the tax bills produced by the Democrats in both the House and the Senate have addressed capital gains taxes, the majority party has cynically combined capital gains tax cuts with higher taxes on other income earners:

There is no doubt that the President will veto any tax bill that raises taxes and hurts the country by creating a false class warfare issue. And he is right to veto. Raising taxes is just plain wrong.

I am afraid, however, that we may not see another tax bill this year. I am concerned that the Democrats will sacrifice the livelihoods of Americans in their attempt to gain election year advantage. If this happens, it will mean that the Democrats will have once again blocked attempts by the President and Republicans in Congress to create jobs for Americans.

Fortunately, there is something the President can do about this. It is true that the tax rate on capital gains can be reduced—for all intents and purposes—by subtracting that part of a capital gain that occurs solely because of inflation. And an argument has recently been made that capital gains taxes can be indexed for inflation without having to pass a law.

In an excellent article some weeks ago, economist Paul Craig Roberts reported that:

The word "cost" in calculating capital gains at the Internal Revenue Service is not defined by statute, but by regulation. The president can cut the capital gains tax rate simply by exercising his authority to change the regulatory definition to index capital gains for inflation. In other words, the cost basis of assets would be adjusted upward to include inflation so that purely nominal rises in price would no longer be subject to taxation as a "capital gain". By subjecting only real gains to tax, the tax rate would fall significantly.

Preventing taxation on inflationary gains not only would reduce the effective capital gains tax rate, but it is a major step in making the Tax Code more fair. Indeed, what could be less fair than current law, where taxpayers are charged for an inflationary increase which does not benefit them at all?

So, I, along with 15 of my colleagues, am sending a letter to President Bush which expresses our support for this regulatory change which we believe he has the authority to make. This change would be a major step toward creating new jobs and capital, and spurring economic growth.

Mr. President I ask unanimous consent that the letter to which I referred be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, February 20, 1992.

Hon. GEORGE W. BUSH,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As you know, a major cause of the high effective tax on capital gains is that inflationary gains—not just real capital gains—are subject to taxation. This is not only bad tax policy, it is fundamentally unfair.

Our understanding is that the flaw in the tax code does not need a legislative correction, but only requires a change in a regulatory definition which is under your authority. In particular, we understand that the Internal Revenue Service definition of the "cost" basis of a capital gain is not defined by statute, but by regulation. That definition could be changed by your authority to include the effects of inflation so that such inflationary gains would no longer be subject to taxation.

Mr. President, we believe it is critical for the recovery of the economy that the decline in values of homes, properties, and businesses throughout the U.S. be stopped. An immediate regulatory change to prevent inflationary gains on capital from being taxed would go far in accomplishing this stability. Just as importantly, it would spur job creation and business growth that is so badly needed for both our short term economic problems and long term international competitiveness.

We urge you to immediately make this regulatory change and end the taxation of inflationary gains on capital assets.

Sincerely,

Connie Mack, Mitch McConnell, John McCain, Jake Garn, Bob Smith, Al D'Amato, Dan Coats, Don Nickles, Steve Symms, Robert Kasten, Conrad Burns, Larry E. Craig, Bob Dole, Malcolm Wallop, Jesse Helms.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana.

Mr. BAUCUS. I thank the Chair.

BUILDING A COMPETITIVE U.S. AUTO INDUSTRY

Mr. BAUCUS. Mr. President, a General Motors CEO once said that "what's good for GM is good for America." If what is bad for GM is bad for America, our country is in tough shape.

Because last week, General Motors announced the closing of 12 factories, the first step of a plan that will leave 74,000 American auto workers unemployed. It is estimated that GM's 1991 North American auto operations lost $1 million an hour. Ford and Chrysler also suffered record losses.

The American automobile industry is emblematic of a broader crisis in our Nation: In sector after sector, we are losing our competitive edge. As a consequence, in many cases, affected industries have sought protection to regain lost market share.

But traditional protection, the kind that we ordinarily have enacted in the past, has a poor track record. For the most part, protection only raised the prices paid by consumers. When it expired, the industries were no more competitive and they only demanded more protection at consumer expense.

THE HARLEY DAVIDSON EXPERIENCE

I think there is a better way. And the experience of the motorcycle manufacturer, Harley Davidson, proves import relief properly framed can promote competitiveness. Harley's motorcycles had been famous worldwide. By the 1970's, the company had learned how to make a lot of bikes, but had forgotten how to make them the best.

Harley took two major steps to reverse its misfortunes. First, it sought import protection, and second, it focused on quality control and employee training.

Harley got import relief in the form of higher tariffs. It used the breathing room to overhaul its operation. In the end, Harley Davidson actually ended up urging the Government to end import protection ahead of schedule.

The Harley example demonstrates that we can turn necessity into virtue by requiring competitive improvements in return for import relief. In fact, given Federal budget constraints, conditioned import relief is one of the few tools the U.S. Government can use to promote competitiveness.

THE AUTO EXAMPLE

The American industry that is now most actively seeking protection is the auto industry. Hit by the double whammy of the recession and Japanese competition, Detroit is reeling.

The auto industry is an important part of our economy. According to recent estimates, the auto industry is responsible for 4.5 percent of U.S. GNP and more than 2 million American jobs. The impact of the auto industry stretches beyond Detroit. The American auto industry supports ranging from electronics to steel.

But, as we all know, the auto industry has been experiencing competitive problems. The Japanese share of the United States auto market has steadily risen since the 1960's. And—although they have succeeded in selling cars in Europe and around the world—the Big Three have not been able to crack the Japanese market in return.

Part of the fault lies with the Big Three. But even when we have products Japanese consumers want to buy, an array of Japanese nontariff barriers has kept United States automakers from making the sale.

The American auto industry is certainly not a basket case. And, it is beginning to show some muscle. Perhaps, with a few years of import protection, the Big Three could once again set the standard for the world to meet and save millions of American jobs in the process.

A NEW PLAN FOR AUTOS

Toward that end, I have unveiled a plan—which I intend to introduce as legislation—to improve the competitiveness of the American auto industry. The proposal is built around the simple concept of limited import relief in return for a quid pro quo—for a commitment to build a more competitive car.

First, my proposal establishes a standstill on Japan's current United States sales level. It would limit Japan's share of the United States vehicle market to the current level of imports from Japan, approximately 2 million units, plus the current level of Japanese transplant production. That means roughly 3.6 million units annually. Transplant autos with 70 percent or greater local content will not be counted against the limit.

These limits would be reviewed every 2 years and would be in place for no more than 7 years. These years are to be a chance to catch up with the competition, and not some loophole for continued business as usual. I will demand that the auto industry demonstrate during this period continued increases in production efficiency, product quality, and consumer service—the criteria set by the Commerce Department for awarding the Malcolm Baldrige National Quality Award.

Every 2 years, the International Trade Commission will evaluate the auto industry against these standards. If quality is not steadily increasing, the protection will be terminated.

But the focus will be on results, not on micromanaging the auto industry. The Big Three themselves will make the specific investment decisions.

Further, if the Big Three want temporary import relief, they will have to scale executive compensation to a level more in line with industrial reality than with major league baseball players. Auto executives cannot expect to collect obscene salaries while they lay off U.S. autoworkers.

CONCLUSION

No one should doubt the talent or tenacity of the United States. Thirty years ago, JOHN GLENN, one of our Members, became the first American to orbit the Earth. And less than a decade later, it was an American astronaut, not a Soviet cosmonaut, who took the first walk on the Moon. America won the technology race.

We can bring the determination we brought to the space race to the challenge of building a competitive economy.

We do not have to beat our chests or raise our voices. We just have to do the job, and do it better than we ever have before. And we have to do it right now.

And if U.S. industries come looking for a free ride at consumers' expense, I will stand in their way. We cannot afford any more free rides for the auto industry, the steel industry, or anyone else.

From now on, the price for Government protection has to be building a more competitive industry. Working together, Government and industry can build a more competitive America.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts [Mr. KERRY].

OMNIBUS CRIME CONTROL ACT—CONFERENCE

The Senate continued with the consideration of the conference report.

Mr. KERRY. Mr. President, I rise to speak on the crime bill, and on the situation that we currently find ourselves in.

I find it somewhat extraordinary, Mr. President, that at a time when the American people have registered such clear and convincing dissatisfaction with the American political process and with the lack of leadership, at a time when in primary after primary they are registering dissatisfaction with the lack of leadership, and when uncommitted seems to win a significant portion of votes that here we are in the U.S. Senate, a year or more after a significant crime bill was passed, and what the American people are watching is the most fundamental, crass, craven, hollow, shallow process of politics being played out on the floor of the Senate.

You even pick up the New York Times, or pick up the Washington Post, and you see a very simple explanation of what is happening here. One side is trying to gain advantage over the other in proving to the American people who is tough on crime. Are we not just terrific?

Meanwhile, yet another American will wind up getting shot in his or her home, or walking down the street, or we will pick up the papers and read about another Capitol Hill employee. That finally brings crime home to people on Capitol Hill—never mind the

fact that countless Americans are feeling it every day—when one of our own gets shot. Then the hue and cry goes up.

But more of those crimes will take place while the U.S. Senate watches a Republican minority try to create an impasse in legislation because they do not like one provision of a bill that was tougher than the bill that their President submitted to the U.S. Senate. I think it is a disgrace. They ought to be ashamed of themselves.

Last year the U.S. Senate rejected the President's crime bill by a 56-to-40 vote. And then Senate Democrats uniformly supported the conference bill that happens to be tougher on crime than the bill that the President had, and more balanced with respect to constitutional rights.

Now the Republicans come back, and really what they want is not necessarily to get a crime bill passed, but what they want is those 30-second advertisements. They want the capacity to try to disadvantage somebody in the U.S. Senate while, in reality, it is the American people who are disadvantaged because of the lack of response on the issue of crime.

I sat with a lot of other people on that cold January day 3 years ago when the President of the United States was inaugurated. I listened as our new President characterized drugs as a scourge. And he promised the American people that it would stop. That was a very dramatic moment and we were all filled with a great deal of hope at that period of time.

Not only has the scourge not stopped, Mr. President, but the American people's patience is being tried.

Drug use continues virtually unabated in the United States today. Moreover, violent crime—which is a sinister byproduct of drug activity and drug sales—continues to ravage our neighborhoods and our schools and our communities. The American people legitimately want to know what are you doing about that? Filibustering crime bills? Jockeying with each other for political advantage while kids are dying in the schools of America?

I think the American people have been more than patient enough. They have understood this war is not going to be won overnight. But they also have been promised results, and very few results have been delivered. The American people have been told, again and again, there is light at the end of the tunnel. But so far about the only thing that they have been able to see is a Government that is groping around blindly, apparently directionless.

The problem ultimately for all of us becomes one of credibility. We keep declaring war, and we keep raising the expectations. But then we fail to provide the resources that are necessary.

In the war on drugs we have been told over the course of the last year that we are making progress because middle-class suburban—and I might add largely white—high school seniors do not use drugs to the extent that they did 5 years ago. But the fact is that you can go to any inner city in the United States of America and find out to what degree drugs have increased, and to what degree the drug-related violence among the kids in those cities have increased.

Go to a crack neighborhood just around the corner in Washington, New York, or Boston, and then try to tell people about the positive direction in which we are heading.

I think the last thing in the world we need is the kind of empty political symbolism that is being carried out here at this point in time. We, obviously, do not need a lot of talk about who is toughest on crime. We need leaders who are willing to make tough choices on how to tackle crime.

I heard my colleagues on the other side of the aisle argue that we have doubled the budget for drugs since George Bush became President. That is true. They have doubled the budget on drugs. But that does not answer the question of whether or not they have funded the drug war to the degree that we need to, to be able to legitimately call it a war. And it also does not take into account where we were when we started the doubling.

Where we were when we started the doubling coming out of the impact of President Reagan, who had declared war on drugs in 1983 and then proceeded to cut every single program that might have helped a drug war to have been fought. I am not just talking about social programs. President Reagan consistently zeroed the budget for State and local assistance, all of which was critical to law enforcement. I think it is a matter of record, uncontested, that his drug strategy was a disaster.

Despite the opposition of the President, Congress passed drug bills in 1986 and in 1988. In those drug bills we increased the funding for drug-related programs, but we were not able to fully fund the 1988 drug bill until the summer of 1989.

And it took literally the threat of this Senator's amendment to take funds out of star wars account and put it into the drug wars account to finally get a commitment that we were going to fully fund the drug war. It was then that the Senator from West Virginia [Mr. BYRD] made the commitment that he would find the money and, indeed, he delivered. But because of the opposition of the administration, a full funding of the drug war never, in fact, took place.

So when President Bush says, "Look, I doubled the drug war," what he is really saying is I have begun to catch up for the devastation that was wreaked when I was Vice President and in fact when I was in charge of the drug war, which is what he originally was when Reagan gave him that assignment in 1982.

As a member of the Byrd task force that carried on the negotiation with our Republican counterparts, I well remember how we had to fight tooth and nail with the administration to get any money to fund drugs, let alone the appropriate amount.

We would suggest more money for treatment or education or for State and local assistance and the Republicans would say, "Wait a minute, we have to check with the White House." They would check with the White House, they would come back and say, "The President does not want to spend the money."

So the President was happy to declare war. The President was happy to go through the great process of telling America how he stood for law and order, but he was never willing to put in place the kind of resources necessary to really fight a drug war.

Here we are in 1992. I think we have had something like six declarations of war on drugs. The Republicans—none of them here on the floor right now—want to say that they are tougher on crime. But the fact is that in 1992, only half the kids in the United States of America are getting education about drugs. What does that say to the other half of the kids who do not get the education? That we do not care about them? That they are not important? That they do not have the same future as the other 50 percent? That the war is only for 50 percent of American kids and not for the others? Or is it only for the 50 percent that represent a certain constituency? And so the inner cities are even more hurt today than they ever were before.

What about treatment? How do you make a serious statement about a drug war if more than 50 percent of the people who are addicts cannot even get treatment?

This was something that we were arguing on the floor of the U.S. Senate in 1986, 1987, 1988, 1990, 1991, and now it is 1992 and we are having a filibuster of a crime fighting bill that has $1 billion of local law enforcement aid in it, and it is the cops on the front line who get hurt, and it is the kids on the front line who get shot, and it is the drug addicts on the front line who die, who suffer because of the politics that are being played here now.

What kind of commitment is that to the drug war? It is a rhetorical commitment, Mr. President, the same rhetorical commitment that it has been the entire time.

Just last week we had a photo opportunity drug war. We had an effort by the President who did a repeat of his car salesman trip to Japan, only this time it was the drug salesman trip to San Antonio. President Fujimori arrived and he surprised the President

because he called the administration's antidrug strategy in Latin America a failure, and he said that millions of dollars have been wasted and there have not been many results.

During the course of that failed summit, President Bush's approach to getting drugs off our streets remained in fundamental disagreement with the Presidents of Colombia and Bolivia and instead of using our resources to stop the demand of drugs at home, President Bush seeks to instead throw them away on foreign militaries that do not need the money and who cannot see it very effectively.

Mr. President, I think that part of our engagement, unfortunately, speaks for itself. But once again, they try to mislead the American people. They say how much progress there has been in casual drug use. But the problem is that in this past year, the statistics show that that even has started to reverse itself because cocaine is now up in every category of use for the first part of this year and for the first time since 1985.

The fact is that while the drug war generals were meeting in San Antonio, those on the front lines have been engaged in a nonstop firefight in our streets and in our schools, and the fact is that despite hundreds of millions of dollars we are pouring into the Andean drug strategy, coca leaf production is not down, it is up, cocaine manufacturing is up, cocaine traffickers have established new bases of operations throughout our hemisphere and cocaine remains widely available on our streets. The price of cocaine is coming down and the purity of cocaine is going up.

None of us quarrel with the goals of the Andean strategy because international cooperation in a legitimate drug war is certainly essential. Sharing intelligence, going after money-laundering operations is vital, but we are not doing enough of that. Targeting drug kingpins and seizing drug shipments are important. But you can seize all the drug shipments you want in the world, you can brag all you want about the number of tons of drugs that you have intercepted. The fact remains that if the same amount of drugs gets into the United States on demand, it really does not matter how much you interdict, and that is precisely where we are today.

The measurement of success is whether or not cocaine use is down, whether cocaine coming into the United States is down, and the answer is to both of those questions, no, it is not.

I personally believe that many of those hundreds of millions of dollars that are going to the militaries of countries which cannot use them correctly would be far better used in the streets of Boston or New York or Washington for more police or in order to give people the treatment they need and deserve with respect to drug education and drug treatment itself.

Mr. President, I do not think anything underscores more the hypocrisy of the situation we find ourselves in than this argument about habeas corpus and this extraordinary proffering of a so-called Republican crime bill.

Last year, Mr. President, we had two crime bills—the Bush crime bill and the conference report that is before us.

The conference report crime bill suggests a 5-day waiting period before people get people-killing weapons to hold in their hands—the Brady bill. That is 5 days to find out if you are crazy, 5 days to find out if you have had a record in jail, not exactly an intrusion on the Constitution, considering the fact that we do not allow people to have nuclear weapons in their back yards, we do not allow them to buy M-1 tanks, we do not allow them to have howitzers. So why should we not make a judgment about whether or not people have other killing instruments in their hands? Five days, that is all we ask. But that mighty Bush bill had no provision at all, nothing, because they cave in to the gun lobby.

On the death penalty, why that tough Bush bill had 43 or 46 different flavors of death penalty. Democrats outdoing the flavors came up with 53 crimes for which people could be put to death, including gun murders.

There was no provision at all for gun murders in the Bush bill. There is in the conference report before us. Drive-by shootings, there was no provision at all in the mighty Bush bill, but there is in the conference report.

Rape and murder, no provision at all in the Bush bill, but there is in the conference report.

What about for law enforcement, the front lines of law enforcement? The conference report that the Democrats have worked out with the House has $1 billion in aid to State and local law enforcement agencies.

How much money was the Bush bill willing to put in front of the law enforcement community to help them in the assistance? Zero. Zero aid to local communities in the Bush bill.

How about gun-related penalties? as I said, the conference report toughened the penalties for gun use during violent crime, including the death penalty. The mighty Bush bill had no death penalty, and fewer mandatory penalties for gun use.

For rural crime and drugs, there was a conference report provision to provide aid to rural law enforcement for drug treatment. No provision at all in the Bush bill.

Drunk driving, the conference report boosts penalties for drunk driving when a child is present in the vehicle. No provision at all in the Bush bill.

Police corps, an idea which was put together jointly in order to assist in getting police into our communities. Finally, we break through with an intelligent proactive effort to try to deal with crime. Nothing is more important in this country than restoring order in our communities.

I think it is fair to say that there is literally chaos in some communities, and it is chaos which is driving people away from their communities, from having a stake in their communities or from even feeling safe. Nothing is more important than to get people to reinvest themselves into the communities of America.

For a long time in the United States, we made it attractive for people to go into the military. We said that if you join the military and wear a uniform in defense of your Nation, we will give you the GI bill, we will pay for your education, we will give you all kinds of benefits. Now we have a different threat in America, and the threat is right here in our communities and in our streets.

It is a threat that demands we attract the best and the brightest people in all cross-sections of our country in order to serve in the communities as part of law enforcement. Nothing would restore a sense of service better than that, and nothing would be more of an assistance to communities that are hard pressed financially, to be able to hire people to be in the police forces. So we have a police corps in this bill. The Bush bill had no such provision, and sadly that, too, is languishing now while we wait for something to happen.

For victims of crime, there was no provision in the Bush bill; there was in the conference.

For child abuse, there was no provision in the Bush bill; there is in the conference.

For drug prisons, there was no provision in the Bush bill; there is in the conference.

Boot camps for violent offenders of drugs and so forth, in the conference bill there is an effort to try to use excess Federal property to have boot camps. How many years has that been kicking around? How long does it take for us to make that happen? That is being held hostage to politics today.

Here we are with a bill that is tougher on crime than what President Bush proposed, but President Bush will not allow it to go forward because he does not like the gun provision in it and because habeas corpus is somehow a problem.

The Senator from Delaware said it yesterday. It bears repeating. Habeas corpus applies to people who are already in jail. The bill we passed limits their appeals. So the Republicans are holding up a crime bill because they are worried about how people already in jail are being dealt with when the bill before us would put people in jail, keep them in jail, and assist the police in keeping our streets safer and in making our communities stronger.

I do not know whether people have lost their bearings or lost their sense or what, but it is astounding to me that those who are blocking a strong, tough crime bill from passage believe they can gain political advantage by pretending that somehow the American people are going to be fooled in this charade. If there is any lesson of the year 1992, it is that the American people are not being fooled. It appears as if people are fooling themselves here in Washington, believing they can continue business as usual, and not allow themselves or the other people here in Washington to be held accountable for those choices.

Mr. President, it is clear to me that the American people are going to hold us accountable and it is precisely this kind of soft peddling, craven political that has people fed up to the gills and ready for change.

I yield the floor.

Mr. SIMPSON. Mr. President, here we go again, out of chute No. 2.

I spoke Tuesday evening about what effect this conference report would have if it were enacted into law. I rise again today to thank my colleagues from the Judiciary Committee for their leadership on this matter. I have spoken often about the fairness and honor of our chairman, and of my deep respect and admiration for our able ranking member, STROM THURMOND.

I also want to commend the leadership shown by Senator HATCH. I trust that my colleagues in the Senate were listening carefully to what he said on the floor yesterday. He went into great detail to demonstrate that the combined effect of the major titles of the conference report could result in giving the most vile and violent criminals the opportunity to get a new trial—with the resulting possibility of being released on bail—and ultimately giving them the chance to return to the streets to repeat their malicious acts against society.

This conference report includes the most offensive procriminal rights provisions imaginable. President Bush will surely veto this bill—of that, I am sure. You see, during this political year, the game is to come up with new and creative ways to create a false and crude impression about the President and Republicans, in general.

I can already imagine the press releases that will be cranked out if we approve this conference report—President Bush vetoes crime bill. It is tailor-made for campaign rhetoric.

It has been interesting to hear what the distinguished chairman of the Judiciary Committee has said during this debate. He referred to facades and straw men and diversions.

The chairman knows I respect him greatly, but I submit that it is this conference report that is the facade.

This legislation uses money as a facade to demonstrate that we truly are doing something. Well, Mr. President, this bill certainly does something. I am certain, however, that what it does is far from what the American people have been promised.

And, I would also observe that the proponents of the conference committee report deftly use their own straw man. For them, the straw man is guns, gun control, and the NRA.

Well, we see every day how well the toughest gun control laws in the country work in the District of Columbia. Some of our colleagues unfortunately know how poorly those types of laws work from their own painful, personal experience.

Gun control is the straw man here, Mr. President.

This conference report is the facade behind which the Bush bashers are hiding and hoping. They are hoping and praying that the Senate passes this bill because they know that President Bush will do what is best for the law-abiding citizens of this country and that he will veto this bill. Then they will turn the rhetoric up by painting the President as failing to act against street crime.

I trust that such activity will not be necessary; and I trust that my colleagues on both sides of the aisle will accept their responsibility to do what is best for the people and vote against this flawed committee report. Throw it in the dust bin where it belongs, and then let's get to work on real, tough criminal law reform.

Mr. SANFORD. Mr. President, I rise to speak today to urge the Senate to support and agree to the conference report on H.R. 3371, the Violent Crime Control and Law Enforcement Act of 1991. This conference report has been sitting at the desk for over 3 months, waiting for us to act. And I just wish to associate myself with the comments made yesterday by the Judiciary Committee chairman pointing out the toll taken by the public because of our refusal to act; 6,000 murders in 94 days, 1.2 million felonies. What is it that we are waiting for?

Opponents of this very tough, very responsible conference report have said that the conference report is soft on crime. Ridiculous.

The conference report puts more cops on the beat, more prosecutors in our courts, and more prisoners behind bars. One thing is clear, Mr. President. Our efforts on the Federal level are insignificant if they do not convey to the American people that the battle is one that overwhelmingly must be waged and won in the communities and in the neighborhoods of our States. Ninety-five percent of all criminal cases are prosecuted in State courts. It is the State criminal justice systems, the State prosecutors, the State police, the State judges, and the State prisons that bear the greatest burden.

The local law enforcement community must be aided in their response to violent crime. They are increasingly understaffed, ill-equipped, and outgunned. Recognizing the importance of supporting those who are on the front lines of our war on crime, this conference bill authorizes $3 billion for local and State law enforcement agencies. This commitment can hardly be described as soft on crime.

Furthermore, I fail to see how enacting the Brady bill, which the Republican alternative surprisingly overlooks, is soft on crime. Our distinguished majority leader has done much to ensure that the Brady bill is enacted into law. He drafted the compromise which is included in the conference report. This approach combines a waiting period with a mandatory background check and authorizes $40 million to help States update and computerize criminal records.

Let us be perfectly clear about what the Brady bill does. It simply imposes a 5-day waiting period for the purchase of handguns until a national instant check system is developed. It also requires police background checks of gun purchasers in order to keep guns out of the hands of criminals. This is not a radical idea; President Reagan is supportive. Our local police officers support it.

My home State of North Carolina has long had a similar provision on the books and it has been readily accepted by our citizens. Without unduly interfering with anyone's right to own firearms, North Carolina's permit system has provided a check against handgun purchases by felons, drug abusers, mental incompetents, and those seeking in quick anger to win an argument. It has not put to disadvantage any law-abiding citizens, gun dealers, hunters, or NRA members. The Brady bill is a rational and responsible policy that will keep guns out of the wrong hands. Law enforcement officers in my State have told me time and time again that passage of the Brady bill is vital if we are to address crime in any significant way. Supporting our local law enforcement officers, who face danger on a daily basis, is not being soft on crime.

I would also point out that the protections afforded citizens under the writ of habeas corpus and the exclusionary rule are too precious and too important in our society to be cast out under some ill-conceived notion that this streamlining effort will reduce crime. Last November, an editorial in the New York Times noted:

* * * Senate Republicans and the White House say they are determined to block enactment because the conference refused to accept even stronger > limits on habeas corpus appeals and looser restraints on exclusion of illegally seized evidence. Neither provision has much to do with > the level of crime on the streets. * * *

My final point is that we must begin to make efforts to address the root causes of crime. Reliance on law enforcement solutions is not enough, and

that is the clear record of the last dozen years. Charles Dunn, director of the North Carolina State Bureau of Investigation, recently wrote an article for the Charlotte Observer on the most appropriate methods to address the crime epidemic. I ask unanimous consent to include Mr. Dunn's article at the end of my remarks.

The theme of the article is that underlying the entire issue of crime in America are the broader subtexts of our society. I wholeheartedly agree. Improving the opportunity to thrive and to succeed, improving the opportunity to be educated, improving the opportunity to be free from hunger and from want, to have a home and to be secure. These must be the cornerstones for our war on crime. This is where the battle must be waged and won. These are the toughest problems to tackle but tackle them we must if we are to honestly say to the voters back home that we are tough on crime. Let us work to end the hopelessness, the injustice, the poverty, and the destruction that generate violence.

I am pleased that the conference report includes an amendment I offered to require the Commission on Crime and Violence to include as an integral part of its study an examination of the basic causes and elements that contribute to crime. It further requests recommendations for specific proposals for both legislative and administrative actions to reduce crime and the elements that contribute to it. This is an important step in addressing the root causes of crime.

Ending the epidemic of violence and crime that is gripping our country will take efforts on many fronts. A comprehensive attack must use a wide variety of tools and approaches. The conference report before us is a well-reasoned starting point for that response, and most assuredly is not soft on crime. It is, instead, supportive of our local law enforcement officers. It is time to take action and pass this tough and responsible conference report.

Thank you, and I yield the floor.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Charlotte Observer, Feb. 5, 1992]

ADDRESSING CAUSES OF CRIME

(By Charles Dunn)

North Carolina is in a major and growing crime crisis that threatens the personal safety and security of property of every citizen.

No one is immune. Babies are being born addicted to crack. People are being shot in the streets, the elderly are being robbed and beaten in their own homes.

In many counties there are areas where law enforcement cannot protect citizens from illegal drugs, from violence and from the loss of property. Drive-by shootings, gang activities and fear are becoming a way of life for many.

The trend is not encouraging. In 1980 North Carolina ranked 40th in the nation in index crimes per 100,000 people. In 1990 North Carolina ranked 20th. If the trends continue. North Carolina will be one of the 10 most dangerous states by the turn of the century.

This situation will not "just go away" by passing more laws and building more prisons, although they are needed.

While illegal drugs and guns and, now, gangs have made a bad situation worse, the roots of the crime problem lie in our inability or unwillingness to address human needs, particularly those of our children.

HELP FOR FAMILIES

A primary cause is dysfunctional families and a lack of resources in most communities to deal effectively with them.

A disproportionate number of problems come from single-parent families, from families where both parents work full time or more, from families where there is alcohol and/or drug abuse, from families where there is child and/or spouse abuse. North Carolina ranks high in all these areas but provides inadequate support or assistance.

A second cause is lack of intervention and treatment programs for the mentally ill and the substance abusers.

Deinstitutionalization was a good concept. Unfortunately, community and family support programs did not come into being, and many of the mentally ill became street people.

The same plight has affected alcoholics and drug addicts. Too often they can't get help and treatment, and they end up in the street—and then in trouble with the law.

In most counties today, the jail is the largest mental health facility. But it offers no special care and treatment for the mentally ill or substance abusers. If these people could be diverted to treatment facilities, they would have hope of being helped, and jails and prisons would have space for criminals.

Schools also are a cause. Many young people end their academic careers under-educated and unqualified for available jobs. Certainly, there is less hope of finding honest work without at least a high school education.

Coupled with the lack of education is the lack of jobs for young people in rural and urban areas. Too often these unemployed or underemployed people become victims of crime and get messed up with alcohol and/or illegal drugs.

Couple all these causes with the ready availability of guns of all shapes and sizes. Violence is becoming a way of life for many.

AN OVERBURDENED SYSTEM

A final reason for the increase in crime. Resources for the criminal justice system have not increased in proportion to population growth, crime increase or even to keep up with all the new anti-crime and anti-drug legislation.

While arrests continue to increase at about the same rate as crime, law enforcement in North Carolina is generally understaffed by national standards, particularly in some rural areas.

The same holds true for the courts. District attorneys do not have enough assistance, and there are too few judges. Recent figures show we are trying fewer than three of every 100 felony cases. That doesn't deter much crime.

The corrections system is overloaded. Parole and probation officers are carrying impossible caseloads. They can't call, much less meet, all the people they are to supervise. Prisons are filled.

All this translates into criminals being released well before finishing their sentences. Once released, too many get back into crime.

Not enough resources are being provided for the criminal justice system to meet today's demands. If our neighborhoods and homes are to be safe and secure, then federal, state and local governments must find resources to provide adequately for law enforcement, courts, and corrections.

But providing for criminal justice alone is not enough. More must be done to keep people out of crime. Hope and opportunity for every citizen are the keys to personal safety and security of property in North Carolina.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CONRAD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

UNFAIR TRADE NEGOTIATIONS

Mr. CONRAD. Madam President, I rise today to talk about an action by the National Farmers Union, which has called for the resignation of the Secretary of Agriculture, Secretary Madigan.

The National Farmers Union has asked for the Secretary's resignation because he has endorsed the so-called Dunkel text as the basis for agreement in the Uruguay GATT round now being negotiated in Europe. The Dunkel text at GATT, the General Agreement on Tariffs and Trade, will determine the future of American agriculture for the next 5 or 10 years.

Madam President, the reason the National Farmers Union is so upset with the Secretary is because he has now endorsed in principle the Dunkel text, which puts American agriculture at a significant disadvantage.

Madam President, we have heard over and over and over that we ought to support free trade. The administration chants it like a mantra, as though those words, those supposedly magic words—free trade—will alter the landscape and somehow bring back to health the heartland of this country that is so badly hurting after a dozen years of neglect.

Madam President, the reason the National Farmers Union is so concerned about an indication by the Secretary of Agriculture that he will support the so-called Dunkel text is because of what that text means, because of what is included in the words of the text. When I was taught about free trade, I was told that free trade meant that whoever was the most efficient, the most productive, would be the one that got the business. That is what free trade is all about.

Is that what is being talked about in the GATT negotiations? Oh, no. We are not talking anymore about who is the most efficient, who is the most productive. We are talking about something

much, much different than that. We are talking about negotiated trade, negotiated trade, and this administration is losing the negotiation.

Madam President, let met just review where we are in this negotiation, where we started and where we are ending up.

This chart shows what commodity support levels are for various commodities in the United States and in the European Community. The dark bars are the support levels in the European Community. The hatched bars are the support levels in the United States. A very interesting picture emerges.

In every one of the commodities, Europe has much higher levels of support for their farmers than we have for ours. For example, in refined sugar, they support their farmers at $30 a hundredweight; our farmers are supported at $21 a hundredweight. In sunflowers, European farmers are supported at $28 a hundredweight; our farmers are supported at $8.80 a hundredweight, a $20 difference. In soybeans, the European farmer gets $15 a bushel, an American farmer less than $5. On durum wheat, the European farmer gets $9.50 a bushel, the American farmer, $4. And on corn, the European farmer gets $5.20, an American farmer gets $2.75.

Madam President, what is happening in the GATT round? Is our side seeking to level the playing field? Are we trying to close the gap between what a European farmer gets and an American farmer? That would make sense. That would be fair, but that is not what is happening.

Hard to believe? Yes; but our Secretary of Agriculture has signed off in principle on a deal that would take equal percentage reductions from these unequal bases.

What is the result? Very simply if you take an equal percentage reduction from an unequal base, you lock in the inequality, you lock in the Europe advantage, you give those European farmers twice as much, in some cases three times as much as an American farmer will get for exactly the same commodity. Is there any wonder that American farmers are upset? Is the any wonder that they feel this administration has sold them out?

Madam President, here are the results of this disastrous deal. The results will be that the European farmer, on sunflowers, will get $22 or $23 a hundredweight, an American farmer will get less than $8; a European farmer, $12 a bushel on soybeans, the American farmer less than 5; the European farmer will get over $8 a bushel for durum wheat, an American farmer, $3.50; and on corn, the European farmer will get $4.70, a bushel, the American farmer, $2.70.

That is not free trade. It is certainly not fair trade. It is negotiated trade and this administration is losing the negotiation.

Is there any wonder that American farmers are upset? Is there any wonder that they feel betrayed? Is there any wonder they feel that they have been sold out?

This cannot stand. You have heard the President say on occasion that this or that cannot stand. Well, this cannot stand. It is not fair. It is not right. And it will hurt the United States. And not just the farmers will be hurt.

Do not, anybody, be misled on that. It will not just be the farmers. One in five jobs in this country is dependent on agriculture and food industry, not just the farmer. It is the truck driver who moves the produce. It is the railroad worker who moves the grain. It is the worker that processes that farm commodity into a final product. It is the people who work in the paper plants that package those products. It is the worker who is in the plastic plant making containers for those products. It is the people who are in the business of selling and marketing those products. It is the people who are in the distribution chain. All of them are threatened, all of them are threatened by a deal that means Europe is in a position to get three times as much for every commodity as the American farmer will receive. Because, if the commodity is grown in Europe that is where the jobs are created.

Madam President, this cannot stand. I am disappointed. More than that, I am deeply disappointed in the Secretary of Agriculture, this Secretary who has been so much better than the last Secretary, so much better. And I understand he has been presented with a fait accompli. I understand that he has been presented with a situation in which this Trade Representative—this Trade Representative, who cares nothing about agriculture, who knows nothing about agriculture—has done over and traded agriculture away like so many cars in order to achieve a result somewhere else.

I understand that he has been put in a corner. That is no excuse, Madam President. Because it is not just him that has been put in the corner, it is very farmer in this country who has been put in a corner.

And our farmers do not have much more to give, Madam President. Our State university did a study that said 1 in 3 grain farmers in my State is going to go under in the next 5 years unless there is a change. Well, this is not the change they had in mind to save that situation.

Madam President, what could be more clear that this is not fair? When a European farmer gets $12 for a bushel of soybeans and for that very same bushel the American farmer gets $5, it is not fair. And we are told that we are to accept that, that it is a good deal for America, that it is free trade. Nonsense. It has nothing to do with free trade.

Madam President, I intend to resist this deal with everything that is in me. I hope that my colleagues will pay attention and will understand what this means, not just to the heartland of America, not just to the farmers, not just to main street of every rural community in the United States, but to the entire economic strength of our Nation. Because that is what is at stake.

Madam President, I thank the Chair.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

CEO PAY AND THE SEC

Mr. LEVIN. Madam President, in May of last year and January of this year, I chaired hearings on the issue of runaway executive pay in corporate America. These hearings disclosed that the pay of chief executive officers in U.S. corporations is out of line with corporate profits, out of line with other American workers, and out of line with CEO pay in other countries. They disclosed that huge levels of executive pay, unmatched by corporate performance, pose a threat to American competitiveness. And they disclosed that the Federal Government is part of the problem.

In June, I introduced a bill to change the Federal Government practices contributing to runaway pay. My bill, the Corporate Pay Responsibility Act, had three main provisions. First, it directed the Federal Government, through the Securities and Exchange Commission, to stop frustrating stockholder efforts to raise executive pay issues at their own corporations. Second, it required corporations to provide clearer disclosure to stockholders of executive pay levels. Third, it directed the SEC to require corporations giving executives stock options to include that compensation in the company books as an expense, which does not happen today.

Since my hearing in May, hardly a week has gone by without another article detailing another example of sky-high executive pay at a company performing poorly. The public and many members of the business community want corporate executives, whose companies are losing money or laying off workers, to sit in the same boat as workers asked to take pay cuts and benefit reductions. In short, they want executive pay related to corporate performance.

Following introduction of my bill and public hearings, and public expressions of frustration with excessive executive pay, last month Chairman Richard Breeden of the Securities and Exchange Commission announced a reversal in a decades-old policy of the SEC. From now on, Madam President, the SEC will not help corporations block stockholders from circulating advisory proposals on how executive compensation should be set in their

companies. That is what the first provision in my bill called for, and I applaud the Chairman's decision.

The Chairman also announced the SEC's intention to address administratively the other two provisions in my bill. He stated that the SEC will soon be issuing a rule to require more comprehensive and clearer disclosure of executive compensation in company proxy statements. Reforms will include a single chart listing all forms of pay, a dollar value for stock options held by executives, and a 3-year salary history—each of which my bill required. The Chairman also directed the SEC's chief accountant to review and report back to the Commission within 120 days on the feasibility and advisability of including stock option compensation in the company books as an expense.

I have always said that the changes required in my bill could be done administratively, and Chairman Breeden could prove me right. But we will not know that for another 120 days, at least, Madam President. So for those who want to know how the SEC announcement affects my intentions relative to the corporate pay responsibility bill, the answer is: It depends upon what actions the SEC finally takes.

This caution is needed, Madam President, because soon after Mr. Breeden made his announcement, the Washington Post reported that some CEO's will not be sitting back and allowing the SEC to change the system that has benefited them. The Post reported on February 21 that, "some of the Nation's largest corporations and premier law firms" have already launched a counterattack to the SEC proposals, claiming that criticisms of excessive executive pay are exaggerated and that stockholders already have all the information and tools they need to stop inappropriate pay at individual companies.

Those claims are wrong. Whether measured against corporate profits, the cost of living, worker salaries, or the salaries of CEO's in other countries, the pay of America's CEO's is out of line and out of whack.

CEO pay has skyrocketed past the pay of other American workers. Compensation experts indicate that, where 15 years ago, CEO pay was 35 times the pay of average American workers, that figure has now climbed to more than 100 times. No other developed country has such a huge pay gap. In Germany, CEO pay is 23 times the pay of average workers. In Japan, the figure is 17 times. In America, it is more than 100 times, which is way out of line with the rest of the world. And it has happened at the same time that corporate profits have stagnated or declined. It is happening in the middle of this recession.

In the past 2 years, the business press has printed a flood of articles about runaway executive pay in corporate America. These articles illustrate the depth of concern in the business community about what is happening. While there may be divisions as to how to solve our economic, health care, and education crises, there appears to be an unusual consensus on the issue of CEO pay. Most agree there has been unacceptable excess.

And not only has CEO pay become an issue in and of itself, it has also become a symbol of the deepening discomfort we are feeling about the values of our society—the fear many of us have that the social disruption we are experiencing is due in part because the rich are indeed getting richer while the rest of America is getting nowhere.

Madam President, as I have said, many members of the business community agree that it is time to rein in runaway executive pay. But there are also some business groups that are fighting the reforms. The Business Roundtable, the largest organization of CEO's in the country, is one of them. When I held hearings on CEO pay issues last May and in January, I invited them to testify, but both times they declined to appear. Now the Business Roundtable is criticizing the SEC for acting in this area.

Madam President, my bill and now the SEC, want to allow the stockholders of America's corporations to be a watchdog on executive pay practices. You heard me right. Until the SEC's announcement last month, stockholders had no right to have their proposals on executive pay—the pay of executives of their own corporations—heard at annual meetings. Now that may be hard to believe, but it is true.

In May, when my Subcommittee on Oversight of Government Management looked at SEC policies on executive pay practices in publicly held corporations, we learned that the SEC was a major roadblock in the way of stockholders having a say on how CEO pay is set in their own corporations. The SEC routinely advised corporations that they were not required to permit such executive compensation proposals to be put to a stockholder vote. In every case presented to the SEC in 1990 in which a corporation did not want to circulate such a proposal, the proposals on executive pay were not considered—and they were not considered with SEC approval. It is hard to believe that in a system based on capitalist principles, that the owners of a corporation were denied even an advisory voice in how much of their money would be paid to their own corporation's executives.

In addition, more than 90 percent of America's publicly held corporations pay their top executives in part with stock options. Stock options are an opportunity to buy company stock at a set price some time in the future. The person who owns a stock option will actually exercise it—that is buy the stock—only when the value of the stock exceeds the price in the option. That allows the option holder to pay for the stock out of the profits of the sale and reap an immediate sizable gain. Few companies outside of the United States use stock options extensively as a form of executive compensation.

But in America, stock option grants mean, frequently, big money for corporate executives. In some cases, CEO's have received what have been called megagrants—options to buy literally millions of shares of stock. The profits can be tremendous for the executive, and yet this form of executive pay is hidden, for the most part, from the view of stockholders and the public.

Although stock options impose real costs on a company, most do not appear on the company books as an expense. They are a freebie in that regard, even though they divert capital from company coffers, dilute the value of shares held by other stockholders and often result in huge compensation for the recipients. In fact, they are even more than a freebie, because at the same time the company does not have to show them as an expense on its books, it is allowed to report them as an expense on its tax returns and take a tax deduction. And their true cost is largely hidden from stockholders. No wonder stock options are such a mushrooming form of compensation for corporate executives.

My bill, S. 1198, would require the cost of stock option compensation to be included in company books as an expense. Chairman Breeden has asked his staff to give him a recommendation for SEC action in this area within 120 days. That is a lot better than the at least 2 years estimated by the Financial Accounting Standards Board at our hearing in January. I told them at that time that I thought we in Congress weren't going to wait that long.

Madam President, again, I am pleased that Chairman Breeden has taken action. He has observed the handwriting on the wall on this issue, and he has understood the wisdom of what it says. I congratulate him for his reform efforts. But the reaction of the Business Roundtable indicates that we have not yet turned the corner on this issue. For that reason, I will be watching closely the debate on the SEC proposals. If the SEC does not take the steps promised in its recent announcement and if it does not agree to require corporations to report executive stock options as an expense in some appropriate manner, I will be returning to the floor to ask for action on S. 1198, the Corporate Pay Responsibility Act. But if as hoped, the SEC follows through on its proposals, I will happily not press my legislation and declare victory.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JENNINGS RANDOLPH'S BIRTHDAY

REACHING THE 90TH MILESTONE

Mr. BYRD. Madam President, with others who have served in this Chamber over the years, I view the U.S. Senate in part as a large extended family—a family whose Members, in spite of separating distances, are still united to us in memory and in shared past experiences.

In that spirit, then, I know that many of our colleagues will want to join me in wishing former Senator Jennings Randolph the happiest of birthdays on this coming Sunday.

Born in 1902, Senator Randolph will be 90 this weekend.

Senator Randolph and I entered the Senate in 1959—I to fill a full term and he to serve out the remainder of the term of the late Senator Neely from West Virginia.

From 1959 until his retirement in 1984, Senator Randolph proved himself a virtual dynamo, concerned about issues vital to the people of West Virginia and our entire country. Through his energy, his foresight, his congeniality, and his irrepressible spirit, Jennings Randolph made friends of many of those Senators still serving today, as well as men and women in countless numbers across our country.

Jennings Randolph is a man possessed of a boundless love for West Virginia and for our Nation. Both in Government and in his several other fields of interest and expression, he has seemed constantly to be looking for ways to assist other people to achieve their own potential, or for avenues by which his neighbors might attain a better life for themselves.

If events can foreshadow destinies, perhaps Jennings Randolph's destiny was outlined at his birth in 1902.

One of Senator Randolph's father's closest friends was the great William Jennings Bryan.

Jennings was fond of recounting the anecdote that his father was with Bryan shortly after Jennings' birth.

When told of the arrival of a new Randolph male, Bryan asked Mr. Randolph, "Have you named this boy?"

"No," the father replied.

"Then why don't you give him part of my name as a good Democrat?"

So Jennings Randolph received his name from the perennial Presidential candidate, William Jennings Bryan—a name that the younger Randolph never tarnished and that he burnished brilliantly in his own career.

Today, Senator Randolph is living in St. Louis, MO. I am privileged to talk with him by telephone from time to time, and I can assure everybody that Jennings Randolph is still vitally interested in our country and in the causes for which he worked throughout a long and productive career.

I can also assure everybody that a grand portion of Jennings Randolph's heart still centers in this Senate and its activities. Particularly, then, this outstanding West Virginian and continuing colleague of ours will welcome the hearty and sincere birthday wishes that we extend to him on the occasion of his 90th birthday.

Madam President, I yield the floor and suggest the absence of a quorum. I withhold that suggestion.

Mr. THURMOND. Madam President, will the Senator yield?

Mr. BYRD. Yes; I will be glad to.

Mr. THURMOND. Madam President, I just want to associate myself with the able remarks of the distinguished President pro tempore of the Senate. I served with Senator Randolph. I was here when he came and I was here when he left. He is a man of character, a man of integrity, a man of high principle. He was a very capable and dedicated man, and I certainly enjoyed serving with him.

We miss him in the Senate, and I want to say that, in talking with him on many occasions, I enjoyed discussing the time when he served as a teacher and a coach. I served in a similar position earlier in my life. I always looked upon him as a Senator and as a man whom young boys could well emulate. I think he is a good role model for them.

I am very pleased to join the able Senator from West Virginia today, the President pro tempore of the Senate, in his remarks he made about Senator Randolph.

Mr. BYRD. Madam President, I thank my distinguished friend from the State of South Carolina [Mr. THURMOND] for his kind remarks concerning my former colleague, Jennings Randolph. I am sure Jennings Randolph will be pleased to read in the CONGRESSIONAL RECORD the words that have been spoken by Senator THURMOND and he will cherish those words.

Again, I thank my friend for noting the forthcoming birthday of Jennings Randolph and for expressing his good wishes to Senator Randolph on that occasion.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. I thank the Chair.

(The remarks of Mr. MCCAIN pertaining to the submission of Senate Resolution 266 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WELLSTONE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk on the conference report accompanying H.R. 3371.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report accompanying H.R. 3371, the Omnibus Crime Control Act:

George Mitchell, Terry Sanford, J.R. Biden, Daniel P. Moynihan, Joe Lieberman, John F. Kerry, Harris Wofford, David Pryor, Jim Sasser, Edward Kennedy, Albert Gore, Charles S. Robb, Bill Bradley, Frank R. Lautenberg, Paul Sarbanes, Jay Rockefeller.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HAPPY BIRTHDAY TO SENATOR JENNINGS RANDOLPH

Mr. ROCKEFELLER. Mr. President, I rise today to ask my colleagues to join me, not only in wishing a very happy 90th birthday to an outstanding individual and retired Member of this body, but in reflecting for just a few moments on the extraordinary political career of Senator Jennings Randolph. A career that spanned 14 years in the House of Representatives and 26 years in the U.S. Senate.

It began in 1932, when at the age of 30, Jennings Randolph was elected to the House of Representatives in the election that carried Franklin Roosevelt to the Presidency in a Democratic landslide. At that very young age, he began immediately addressing the problems that affected his con-

stituency in his beloved West Virginia, while at the same time winning the respect and admiration of his peers.

From the beginning, he became a member of committees through which he could improve the living conditions of the people of West Virginia, such as the House committees dealing with labor and roads and the Mines and Mining Committee, in which he chaired the Subcommittee on Coal. To highlight just a little of his legislative history while in the House of Representatives, he sponsored the Civil Aeronautics Act of 1938, helped to establish the National Air Museum, served as counselor for the National Aeronautical Association, and strongly supported Federal aid to airports and air mail pickup. He supported the merging of the armed services under a single Department of Defense, the New Deal domestic legislation and President Truman's European aid policies.

In the Senate, Jennings Randolph continued his role as congressional leader, serving on such powerful committees as Environment and Public Works, Labor and Human Resources, Select Committee on Small Business and Veterans' Affairs. He was a member of the Senate steel caucus, the Senate coal caucus, The Senate export caucus, the tourism caucus and the wood energy caucus. In the Senate, he proposed legislation to carry on the Federal highways program, supported liberalizing veterans' pensions, voted against efforts to weaken civil rights legislation, supported salary increases for Federal workers and medical aid for the elderly. He supported an increase in the minimum wage, the housing bill, extension of unemployment benefits and Federal aid to schools. He also was a strong advocate for the disabled.

He sponsored the legislation giving 18-year-olds the right to vote, is credited with the passage of the Randolph-Sheppard Act and the establishment of the Peace Academy, and helped to draft the National Labor Relations Act, and the Clean Air and Clean Water Acts. Senator Randolph focused his attention throughout his career on the problems of his State, including its largest industry, coal mining. In 1972, Congress passed a measure sponsored by Senator Randolph liberalizing eligibility standards for benefits to miners with black lung. And you could always count on his fighting for the Appalachian Regional Commission and the Economic Development Administration.

Clearly, the record shows his accomplishments are far too numerous to mention, just as the awards he received over the years would fill several pages.

Senator Jennings Randolph retired from the U.S. Senate in 1985. He is now living in Missouri where he moved to be close to his family. On Sunday, March 8, he will celebrate his 90th birthday.

Mr. President, to be able to celebrate one's 90th birthday is definitely a glorious occasion, as I'm sure all my colleagues would agree. The gift of long life is indeed that, a gift. But to chart the course of one's life so as to enhance the lives of others, to dedicate that life to public service, vastly improving the State and the country you love so much, is without a doubt a noble accomplishment.

I once read that Senator Randolph has been described as a "skillful speaker, with a genial approach, a firm handshake, and a trace of the snake-oil vendor." However he may be described, one thing is certain. West Virginia and these great United States are benefactors of a truly dedicated statesman. Happy birthday, good friend.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair has two appointments.

The Chair, on behalf of the majority leader, pursuant to Public Law 102-240, appoints the following individuals as members of the National Commission on Intermodal Transportation: Leon Eplan of Georgia, and Wayne Davis of Maine.

The Chair, on behalf of the majority leader, pursuant to Public Law 102-240, appoints the following individuals as members of the Commission To Promote Investment in America's Infrastructure: F. Woodman Jones of Maine, and Frank Hanley of Maryland.

AMENDMENT TO THE FOOD STAMP ACT OF 1977

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2324, a bill making a technical correction of the Food Stamp Act to include the blind in the category of disabled persons introduced earlier today by Senators LEAHY and DOLE; that the bill be deemed read three times and passed and the motion to reconsider laid upon the table. Further, that any statements relating to this measure be printed in the RECORD at an appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2324), deemed to have been read three times and passed, is as follows:

S. 2324

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSIONS FROM FOOD STAMP INCOME.

(a) IN GENERAL.—Section 5(d)(16) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)(16)) (as amended by section 903(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237)) is further amended by striking "section 1612(b)(4)(B)(iv) of the Social Security Act (42 U.S.C. 1382a(b)(4)(B)(iv))" and inserting "subparagraph (A)(iii) or (B)(iv) of section 1612(b)(4) of the Social Security Act (42 U.S.C. 1382a(b)(4))".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on the earlier of—

(A) December 13, 1991;

(B) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a member of the household had a plan for achieving self-support as provided under section 1612(b)(4)(A)(iii) of the Social Security Act (42 U.S.C. 1382a(b)(4)(A)(iii)); or

(C) beginning on the date that a fair hearing was requested under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) contesting the denial of an exclusion for food stamp purposes for amounts necessary for the fulfillment of such a plan for achieving self-support.

(2) LIMITATION ON APPLICATION OF SECTION.—Notwithstanding section 11(b) of the Food Stamp Act of 1977 (7 U.S.C. 2020(b)), no State agency shall be required to search its files for cases to which the amendment made by subsection (a) applies, except where the excludability of amounts described in section 5(d)(16) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)(16)) was raised with the State agency prior to December 13, 1991.

REREFERRAL OF S. 2282

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2282, a bill to carry out a highway project in Alabama, and that the bill be referred to the Committee on Environment and Public Works.

The PRESIDING OFFICER. Without objection, it is so ordered.

EWING T. KERR UNITED STATES COURTHOUSE

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1889.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1889) entitled "An Act to designate the United States Courthouse located at 111 South Wolcott in Casper, Wyoming as the 'Ewing T. Kerr United States Courthouse'", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. FINDINGS.

The Congress finds that—

(1) Ewing T. Kerr has dedicated 64 years of his life to the practice of law in the State of Wyoming;

(2) over a period of 36 years, as a Federal district judge, Ewing T. Kerr has embodied the spirit of public service and has been dedicated to upholding the law of the land; and

(3) Ewing T. Kerr deserves recognition, honor, and gratitude.

SEC. 2. DESIGNATION.

The Federal Building and United States Courthouse located at 111 South Wolcott Street in Casper, Wyoming, is designated as the "Ewing T. Kerr Federal Building and United States Courthouse".

SEC. 3. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the

United States to the Federal Building and United States Courthouse referred to in section 1 is deemed to be a reference to the Ewing T. Kerr Federal Building and United States Courthouse.

Amend the title so as to read: "An Act to designate the Federal Building and the United States Courthouse located at 111 South Wolcott Street in Casper, Wyoming, as the 'Ewing T. Kerr Federal Building and United States Courthouse'.".

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. I move to reconsider.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FRANK M. JOHNSON, JR., UNITED STATES COURTHOUSE

Mr. MITCHELL. Mr. President, I ask that the chair lay before the Senate a message from the House of Representatives on S. 1467.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1467) entitled "An Act to designate the United States Courthouse located at 15 Lee Street in Montgomery, Alabama, as the 'Frank M. Johnson, Jr. United States Courthouse'", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. DESIGNATION.

The Federal Building and United States Courthouse located at 15 Lee Street in Montgomery, Alabama, shall be known and designated as the "Frank M. Johnson, Jr. Federal Building and United States Courthouse".

SEC. 2. REFERENCES.

Any reference in any law, map, regulation, document, paper, or other record of the United States to the Federal Building and United States Courthouse referred to in section 1 shall be deemed to be a reference to the "Frank M. Johnson, Jr. Federal Building and United States Courthouse".

Amend the title so as to read: "An Act to designate the Federal Building and the United States Courthouse located at 15 Lee Street in Montgomery, Alabama, as the 'Frank M. Johnson, Jr. Federal Building and United States Courthouse'.".

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I move to reconsider.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2720. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend the Act of August 30, 1890 and the Act of March 4, 1907 to eliminate the provisions for permanent annual appropriations to support land grant university instruction in the food and agricultural sciences; to the Committee on Appropriations.

EC–2721. A communication from the Acting General Sales Manager, Foreign Agricultural Service, transmitting, pursuant to law, a report on modifications of the determination of agricultural commodities and quantities available for programming under the Agricultural Trade Development and Assistance Act of 1954; to the Committee on Agriculture, Nutrition and Forestry.

EC–2722. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the Office of Thrift Supervision's financial statements for the period from October 8, 1989, through December 31, 1989; to the Committee on Banking, Housing and Urban Affairs.

EC–2723. A communication from the General Counsel of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, a report on the determination for the appointment of a conservator or receiver under the Home Owner's Loan Act; to the Committee on Banking, Housing and Urban Affairs.

EC–2724. A communication from the Secretary of the Energy, transmitting, pursuant to law, the annual report on the Automotive Technology Development Program for Fiscal Year 1991; to the Committee on Energy and Natural Resources.

EC–2725. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the annual determination of the Secretary of State that Israel is not being denied its right to participate in the activities of the International Atomic Energy Agency; to the Committee on Foreign Relations.

EC–2726. A communication from the Chairman of the Board of Governors, Federal Reserve System, transmitting, pursuant to law, the annual report covering the implementation of its administrative responsibilities under the Sunshine Act during calendar year 1991; to the Committee on Governmental Affairs.

EC–2727. A communication from the Executive Director of the United States Holocaust Memorial Council, transmitting, pursuant to law, the annual report on internal control requirements for fiscal year 1991; to the Committee on Governmental Affairs.

EC–2728. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, the report describing the number of appeals submitted to Board, the number processed to completion, and the number not completed by the originally announced to date for fiscal year 1991; to the Committee on Governmental Affairs.

EC–2729. A communication from the Chief Judge of the United States Tax Court, transmitting, pursuant to law, the actuarial reports on the Tax Court Judges' Retirement and Survivor Annuity Plans for the year ending December 31, 1989; to the Committee on Governmental Affairs.

EC–2730. A communication from the Director of the Administrative Office of the United States Court, transmitting, a draft of proposed legislation entitled "The Federal Courts Improvements Act"; to the Committee on the Judiciary.

EC–2731. A communication from the Special Counsel of the United States, transmitting, pursuant to law, the annual report of the Office of Special Counsel under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2732. A communication from the Managing Director of the Interstate Commerce Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2733. A communication from the Secretary of the Resolution Trust Corporation, transmitting, pursuant to law, the annual report of the Corporation under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2734. A communication from the President of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, the annual report of the Board under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2735. A communication from the Vice President and General Counsel of the Oversight Investment Corporation, transmitting, pursuant to law, the annual report of the Corporation under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2736. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the annual report of the Endowment under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2737. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the annual report on the Agency under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2738. A communication from the Chairman of the National Energy Regulatory Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2739. A communication from the Chairman of the Board of Governors, Federal Reserve System, transmitting, pursuant to law, the annual report of the Board under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2740. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2741. A communication from the First Vice President and Vice Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report of the Bank under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2742. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the annual report of the Administration under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–2743. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report conveying

the results of the Comptroller's attempt to audit the Pension Benefit Guaranty Corporation's financial statements for the fiscal years ended September 30, 1991 and 1990; to the Committee on Labor and Human Resources.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BENTSEN (for himself and Mr. PACKWOOD):

S. 2318. A bill to amend title XVIII of the Social Security Act to make technical corrections relating to the Omnibus Budget Reconciliation Act of 1990; to the Committee on Finance.

By Mr. NICKLES (for himself, Mr. REID, Mr. COCHRAN, Mr. BURNS, Mr. DOLE, Mr. HELMS, Mr. GRASSLEY, Mr. STEVENS, and Mr. MCCONNELL):

S. 2319. A bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes; to the Committee on Governmental Affairs.

By Mr. WELLSTONE (for himself, Mr. METZENBAUM, and Mr. SIMON):

S. 2320. A bill to amend the Public Health Service Act to provide universal health care to all Americans, and for other purposes; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. HEFLIN, Mr. JOHNSTON, Mr. WALLOP, Mr. MITCHELL, Mr. MURKOWSKI, Mr. FORD, Mr. GARN, Mr. INOUYE, Mr. SHELBY, Mr. BINGAMAN, Mr. GRAHAM, and Mr. EXON):

S. 2321. A bill to increase the authorizations for the War in the Pacific National Historical Park, Guam, and the American Memorial Park, Saipan, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. CRANSTON (for himself, Mr. SPECTER, Mr. DECONCINI, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. SIMPSON, Mr. THURMOND, Mr. MURKOWSKI, and Mr. JEFFORDS):

S. 2322. A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

By Mr. CRANSTON (for himself and Mr. DECONCINI):

S. 2323. A bill to amend title 38, United States Code, to revise the rates of dependency and indemnity compensation payable to surviving spouses of certain service-disabled veterans, to provide supplemental service disabled veterans' insurance for totally disabled veterans, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LEAHY (for himself and Mr. DOLE):

S. 2324. A bill to amend the Food Stamp Act of 1977 to make a technical correction relating to exclusions from income under the food stamp program, and for other purposes; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SIMON (for himself, Mr. AKAKA, Mr. BUMPERS, Mr. D'AMATO, Mr. DASCHLE, Mr. GRASSLEY, Mr. SANFORD, Mr. SHELBY, and Mr. WOFFORD):

S. Res. 264. Resolution to express the sense of the Senate that people in the United States should plant more trees in their communities; to the Committee on Environment and Public Works.

By Mr. SIMON (for himself, Mr. AKAKA, Mr. BUMPERS, Mr. D'AMATO, Mr. DASCHLE, Mr. GRASSLEY, Mr. SANFORD, Mr. SHELBY, and Mr. WOFFORD):

S. Res. 265. Resolution to express the sense of the Senate that the United Nations should designate 1993 as the "Year of the Tree" in order to encourage the citizens of the world to plant trees; to the Committee on Foreign Relations.

By Mr. MCCAIN (for himself, Mr. D'AMATO, Mr. KERRY, Mr. DECONCINI, Mr. DIXON, Mr. SHELBY, Mr. SMITH, Mr. THURMOND, Mr. LEVIN, Mr. WARNER, Mr. SIMON, Mr. GLENN, Mr. GRAHAM, Mr. BRYAN, Mr. HATCH, Mr. KOHL, Mr. HELMS, Mr. BOND, Mr. AKAKA, and Mr. GRASSLEY):

S. Res. 266. Resolution expressing the sense of the Senate concerning the arms cargo of the North Korean merchant ship Dae Hung Ho; to the Committee on Foreign Relations.

STATEMENTS ON BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN (for himself and Mr. PACKWOOD):

S. 2318. A bill to amend title XVIII of the Social Security Act to make technical corrections relating to the Omnibus Budget Reconciliation Act of 1990; to the Committee on Finance.

TECHNICAL CORRECTIONS TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

• Mr. BENTSEN. Mr. President, last March, Senator PACKWOOD and I introduced S. 750, the Technical Corrections Act of 1991, a bill to make technical corrections to the Omnibus Budget Reconciliation Act [OBRA] of 1990. Since then, we have received constructive comments on the bill from a number of sources and it is my intention that the Finance Committee take action on S. 750 soon.

It has come to our attention that some insurance companies are suggesting to Medicare beneficiaries that OBRA 1990 includes a provision that was deliberately intended to deny Medicare beneficiaries the ability to make a free choice regarding purchase of health insurance coverage. This information is inaccurate, misdirected, and not constructive.

The provision to which these letters refer was intended to strengthen previous prohibitions on the sale of a Medicare supplemental (Medigap) insurance policy to an individual already covered by another Medigap policy. Unfortunately, while the legislative history supports this narrow intent, a strict reading of the statutory language suggests that the provision may also be interpreted to restrict the sale of other health insurance products with coverage that duplicates Medicare or Medigap benefits.

When this issue first came to our attention last November, Senator PACKWOOD and I sent a letter to the Health Care Financing Administration indicating the intent of the OBRA 1990 conferees, based upon the joint explanatory statement submitted with the conference report accompanying H.R. 5835, was to first, prohibit the sale of a Medigap policy to an individual already covered under a Medigap policy; second, prohibit the sale of a Medigap policy to a Medicaid beneficiary; and third, strengthen the enforcement provisions that were already in the statute.

The bill we introduce today would amend the statutory language. It is our intention to take action on this bill when the Committee on Finance takes up S. 750 this year.•

By Mr. NICKLES (for himself, Mr. REID, Mr. COCHRAN, Mr. BURNS, Mr. DOLE, Mr. HELMS, Mr. GRASSLEY, Mr. STEVENS, and Mr. MCCONNELL):

S. 2319. A bill to require analysis and estimates of the likely impact of Federal legislation and regulations upon the private sector and State and local governments, and for other purposes; to the Committee on Governmental Affairs.

ECONOMIC AND EMPLOYMENT IMPACT ACT OF 1992

Mr. NICKLES. Mr. President, today I along with several of my colleagues are introducing the Economic and Employment Impact Act of 1992 which will require a full disclosure of all costs associated with legislation considered by Congress as well as any regulations promulgated by a Federal agency.

In 1990 the total annual cost of Federal regulation was upward of $562 billion and is projected to be as much as $688 billion by the year 2000. The American taxpayer is very aware of the costs of Government that show up in the Federal budget. However, we are less sensitive to the hidden cost of troublesome legislative and regulatory burdens. According to a report on the cost of regulation done by Thomas Hopkins at the Rochester Institute of Technology, total regulatory cost per household in 1992 will be $4,272 and will rise to $4,647 in the year 2000.

Often, Congress fails to consider how much a new law or regulation increases the cost of products and services to consumers or the loss in jobs when businesses have to cut back in response to growing Federal demands. The Economic and Employment Impact Act will make Congress and the administration aware of the impact, positive and negative, that legislation has on the private sector, individuals, and State and local governments.

The act would require that all legislation considered by Congress be accompanied by an economic and employment impact statement. The statements will contain the positive and negative effects on employment, gross domestic product, the ability of U.S. industries to compete internationally, and the cost to consumers. Further, it would require that final regulations and proposed regulations promulgated by executive branch agencies also be accompanied by such a statement.

To prevent an unwarranted delay in the legislative and regulatory process, a detailed assessment will not be required if a preliminary analysis indicates that the aggregate effect of the legislation is less than $10 million or results in reduced employment of less than 1,000 jobs. Congress may also waive the provisions regarding the impact statement by a three-fifths vote of either House.

Similar legislation was unanimously agreed to in the form of an amendment I authored during the 100th Congress. With that, Congress has sent a signal to our Nation's citizens that it cares about out-of-control Federal mandates and is ready to take steps to rectify its excessive regulation.

I do not believe economic forecasts are perfect and economists are not oracles. However, economists have tools which governments and industries around the world use every day. But today, Congress is not getting the best available economic advice on how a new law or regulation will affect the vast and varied American economy. Congress is not applying these economic tools to the vast number of pressing issues that face the Nation.

Some will say the purpose of this legislation is to hinder the regulatory process, not so. The intent of this legislation is to establish a process to ensure better and more efficient regulation. The process this legislation sets up does not pass judgment on whether a bill or regulation is good or bad but simply completes the formula as Congress considers legislation and the executive branch promulgates regulation.

Mr. Thomas Hopkins, Professor of Economics at the Rochester Institute of Technology, sums it up best in his paper the "Cost of Regulation"; "The point here is simply that enough evidence exists, however incomplete it may be, to suggest that regulatory costs are substantial and growing. The magnitudes are large enough to warrant a more vigorous effort to firm up these cost estimates and to examine regulatory benefits with greater care in the interests of more rational public policy."

While there are many seemingly "good ideas" out there in the form of new legislation, our economy simply cannot absorb every good idea coming down the pike. We must send the American people a positive signal by showing them we will only support "good ideas" that make sense to the economy and employment.

Mr. REID. Mr. President, how many times do we hear or read about the private sector, as well as State and local governments, getting stuck with the tab when mandates are issued by the Federal Government? Legislation passed by Congress and regulations issued by the executive branch are financially strapping businesses and placing many States and localities in precarious budget situations. In many cases, unemployment is the result. Mr. President, this situation must be addressed.

I would never pretend to come before this body and say that we must stop the regulation. Much of the legislation that we pass here is necessary. I don't believe that can be disputed. However, it is also true that when we do pass legislation, we may not know the total economic and employment ramifications that result from our actions.

Today I am introducing bipartisan legislation, along with Senator NICKLES of Oklahoma, that is nothing less than common sense, good government. This legislation will ensure that the American people are fully aware of the impact that Federal legislative and regulatory activity will have on economic growth and employment. It will require that both Congress and the executive branch take responsibility for the fiscal and economic effects that result from our actions. In essence, it will stop us from operating in an economic vacuum.

The Economic and Employment Impact Act of 1992 would require all legislation considered by Congress, and any regulation promulgated by a Federal agency, to be accompanied by an "economic and employment impact statement." The statements will declare the proposals' effects on employment, gross domestic product, consumer costs, and the ability of U.S. industries to compete internationally. These issues would be addressed as they relate to the private sector, individuals, and/or State and local governments.

The economic and employment impact statement required by this legislation will be prepared by the General Accounting Office and accompany each bill, resolution, or conference report before the measure may be reported or otherwise considered on the floor of either House. The legislation will also require Federal departments and agencies to prepare this statement for each regulation and proposed regulation promulgated by that agency and publish the statement in the Federal Register.

To prevent an unwarranted delay in the legislative and regulatory process, a detailed assessment will not be required if a preliminary analysis indicates that the aggregate effect of the legislation is less than $10 million or results in reduced employment of less than 1,000 jobs. Congress may also waive the provisions regarding the impact statement by a three-fifths vote of either House.

Just last week some bankers from Nevada stopped by for their annual visit. They gave me a list of 44 regulatory provisions that Congress alone has passed over the last 5 years. Mr. President, no one would argue that Congress is responsible for the regulation of this industry. The Federal Government is responsible for paying off depositors should a bank fail, and, as a result, must ensure the safety and soundness of the industry. However, were the economic ramifications of these 44 provisions considered? Probably not in all cases.

According to the bankers, complying with Government regulations is costing between $500 million to $1 billion per year, nationwide. I would have to believe that most of these costs are eventually passed on to the customer, either in the form of higher fees or reduced bank credit available to local communities.

In addition, Mr. President, I continue to hear from State, county, and local governments about problems with Federal mandates. The National Association of Counties recently adopted a resolution that among other things states, "Federal assistance to States, counties and municipalities still is declining in real dollar terms while further Federal mandates continue to be imposed." The resolution continues, "It is essential to reduce unfunded mandates and to oppose new mandated programs unless adequate Federal or State funding is provided."

I have to stress that regulation is a necessary evil in our world today. As a member of the Environment and Public Works Committee I am well aware of this fact. It is the duty of Congress to ensure the safety and soundness of the American people. But, Mr. President, lets make these decisions based on the entire picture. Having an economic and employment impact statement that accompanies legislation will allow us to pass measures that will be the least disruptive to economic growth and employment opportunities.

I urge my colleagues to cosponsor the Economic and Employment Impact Act of 1992.

Mr. HELMS. Mr. President, I rise as an original cosponsor of the Economic and Employment Impact Act of 1992 introduced by my distinguished colleagues, Senator NICKLES and Senator REID.

It would be impossible to overestimate the current rapid expansion of government involvement in business in the United States. The majority of public policy changes affecting business-government relations in recent years has unquestionably been in the direction of greater governmental intervention—environmental controls,

equal employment opportunity enforcement, consumer product safety regulations, energy restrictions—the list goes on and on. Indeed, when we attempt to look at the emerging business-government relationship from the business executive's viewpoint, we see a very considerable Federal Government presence in what historically have been private affairs.

Mr. President, no one who operates a business today, whether it be the head of a large corporation or the mon-and-pop general store, can escape the multitude of Government restrictions and regulations. His or her costs and profits are affected as much by a bill passed by Congress as by an executive decision in the front office or a customer's decision at the checkout counter. Every industry in the United States is feeling the rising power of government regulation in it's day-to-day operations.

At first glance, Government imposition—and make no mistake that's exactly what it is—of socially desirable regulations on business through the regulatory process appears to be an inexpensive way of achieving national objectives. This practice apparently costs the Government little, about one-percent of the Federal budget. But the public does not escape paying the costs so easily.

For example, every time the Environmental Protection Agency imposes a more costly method of production on any firm, the cost of the firm's product to the consumer will tend to rise. These high prices represent nothing more than the hidden tax of regulation that is shifted from the Government to the consumer. According to the Center for the Study of American Business at Washington University, on the average, each dollar that Congress appropriates for regulation results in an additional $20 of costs imposed on the private sector of the economy. Mr. President, this is outrageous and should be stopped.

Moreover, to the extent that Government-mandated regulations impose similar costs on all price categories of a given product, such as automobiles, this hidden tax tends to be more regressive than the income or sales tax. According to the Motor Vehicle Manufacturers Association, which tracks the costs of Government-mandated regulations on automobiles, the additional cost of an automobile that is assumed by the consumer in safety and emissions requirements is $2,717.57 per car. This figure does not include the costs for improved warranties, corrosion protection, changes in standard equipment or the requirements of the Occupational Safety and Health Administration and the Equal Employment Opportunity Commission. For a car costing $16,000, this amounts to approximately $1 out of every $8 paid by the consumer for Government regulations. Of course, it is not inevitable that every regulatory activity will increase inflationary pressures. Where regulation generates social benefits in excess of the social costs it imposes, inflationary pressures should be reduced.

Mr. President, because of the rapid proliferation of Government regulatory activity, it would be a useful attempt to measure this phenomenon. Under the provisions of the Economic and Employment Act all legislation considered by Congress would be accompanied by an economic and employment impact statement that would contain both the positive and negative effects on employment, general domestic product, the ability of U.S. industries to compete internationally and the cost to consumers.

To be sure, the intent of this bill is not to unnecessarily delay legislation. Therefore, in cases where a preliminary analysis indicates that the aggregate effect of the legislation is less than $10 million or reduces employment less than 1,000 jobs, a detailed cost-benefit assessment will not be required.

Mr. President, an untold number of bills are considered, and too many approved, by Congress at the demands of the thousands of special interest groups in Washington without the slightest consideration for the American producers and consumers. Well, those are the people I was sent here to represent, not the special interest groups, and they are telling me that they have had enough of Big Brother in Washington.

I concluded long ago that the best thing the Federal Government can do for American businesses, large and small, is to do as little as possible. I recognize that some regulation may be necessary, but that type of Government interference should be kept to a very minimum.

Mr. President, this is good legislation, it's long overdue and, most importantly, it is what the American people want. The very least Congress can do, especially now, is assure the American people that it will not impose regulations that would increase costs to consumers, cost workers their jobs or damage the ability of our industries to compete internationally.

By Mr. WELLSTONE (for himself, Mr. METZENBAUM, and Mr. SIMON):

S. 2320. A bill to amend the Public Health Service Act to provide universal health care to all Americans, and for other purposes; to the Committee on Finance.

UNIVERSAL HEALTH CARE ACT

Mr. WELLSTONE. Mr. President, I rise to introduce the Universal Health Care Act of 1992. This bill sets up a National Health Insurance Program, a single payer system.

This is the companion bill to H.R. 1300, introduced in the House of Representative last year by Congressman MARTY RUSSO. I am pleased to include as original co-sponsors Senator HOWARD METZENBAUM of Ohio and Senator PAUL SIMON of Illinois.

Organizations supporting this bill include Actors Equity; Amalgamated Clothing and Textile Workers Union; American Federation of State, County and Municipal Employees; the American Medical Students Association; American Postal Workers Union; American Public Health Association; Children's Defense Fund; Consumer Federation of America; Citizen Action; Communication Workers of America; Consumers Union; Families U.S.A.; Graphic Artist Guild; International Association of Machinists and Aerospace Workers; International Ladies' Garment Workers; International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers; National Association of Social Workers; National Council of Senior Citizens; Oil; Chemical and Atomic Workers International Union; Physicians for a National Health Program; Public Citizen; the Screen Actors Guild; Transport Workers Union; United Automobile, Aerospace and Agricultural Implement Workers of America; United Electrical, Radio and Machine Workers of America; United Mine Workers.

The goal of this legislation is this: To insure access to affordable, quality health care to every American citizen—regardless of income, regardless of employment status, regardless of current health condition, regardless of age, and to achieve this access in the most efficient and equitable manner. Let's compare this goal to our present realities:

More than 34 million Americans without health insurance—our children, our workers, our farmers, our small business people, our unemployed—a reality.

So many uninsured that there are now more uninsured Americans than at any time since the creation of Medicare and Medicaid in 1965—a reality.

Millions more Americans, increasingly the middle class, with too little insurance—a reality.

Virtually all Americans who do have health insurance are just one job or one illness away from losing their health insurance—a reality.

The United States as the only major industrialized country other than South Africa which fails to guarantee all of its citizens access to medical care—a reality, a disgraceful reality.

Families bankrupted by long-term illnesses, a fate that could befall virtually any one of us at any time—a reality.

A quarter of our health dollar spent on billing and administration, instead of on the actual care of people in need—a reality.

And the number of health administrators rising three times as fast as the number of physicians or other health workers—a reality.

The United States spending more on health care than any other nation, more than 13 percent of our gross national product—a reality.

And the United States projected, on current course, to spend 17 percent of our GNP on health care costs by the year 2000 and 37 percent by the year 2030. This we cannot let become a reality.

We have the most expensive health care system in the world.

The most expensive, and the least popular among developed countries.

The most expensive, and the least comprehensive among developed countries.

The most expensive, and the most confusing and bewildering for consumers and for health care providers.

It will be these realities that will make health care reform a reality. Because the reality is, we have no other choice.

So the question is no longer whether there will be health care reform. The question is what shape that reform will take.

I believe we need fundamental reform—a complete overhaul of a health care system that is too costly, too arbitrary, too unfair.

Think about the system we have today.

Today there are more than 1,500 private health insurance companies. In large part, they compete based on risk selection—that is, insuring only the healthiest individuals they can find—instead of competing on efficiency or service.

We have let a private industry, the private insurance industry, write the rules, make the decisions about who gets insurance and who must go without.

And what has the insurance industry decided about who gets care and who does not? The industry has decided that it will seek to maximize its profits by insuring only well people.

People who are most in need of medical care frequently cannot get health insurance.

No one—no one—in our country has a guarantee that their private health insurance will be there when they need it.

This is ludicrous. This is absurb. This turns the very concept of insurance on its head. We are moving toward the day when you can only get insurance when you can demonstrate that you won't need it.

This isn't to say that insurance companies operate with bad intent. What I'm saying is insurance companies are operating in a system with perverse incentives.

It is time to make sense out of the system.

And so today I introduce the Universal Health Care Act of 1992.

A National Health Insurance Program is the simplest, most efficient, most equitable way to reform our health care system. The concept is to streamline and simplify the administration of health care and perserve and enhance consumer choice in the delivery of health care.

A national health insurance system would be funded through a single source, the Government, but administered in large part through the States.

There would be no barriers to care, no gaps in coverage. The Government would become the sole health insurer. Consumers would simply show their national health card to receive health care from the health provider of their choice. Everyone would be entitled to the same benefits, and these would not change when a person changed jobs or moved to a different State. No one would lose coverage because they got sick.

This bill contains a comprehensive package of benefits, including hospital and physician care, long-term care, prescription drugs, preventive care, and defined mental health benefits.

Services would be delivered through the same sources as today: Private doctors and nurses, health maintenance organizations, clinics, nursing homes, hospitals.

In other words, the Federal Government—with contributions from the States—would finance the system but would not run the clinics, the doctors' offices, the hospitals.

An emphasis would be placed on primary and preventive care. This would allow us to address health problems before they become more serious—and more expensive.

The National Health Insurance Program would allow us to better plan how and where to spend our health care dollars so that we invest our resources where they are most needed. Unfortunately, today we often invest our health care dollars where the money can return the highest investment. This results in an oversupply of high-technology equipment and facilities in some areas—and total lack of necessary investment in other areas. And we have created a system of disincentives for health care providers to practice in areas that are in the most need of their services.

The bill requires that in setting reimbursement rates for health care providers the government encourage the location of providers in rural and medically underserved areas. In addition, the bill requires that one of the factors that must be considered in setting State health care budgets and capital budgets is the geographic distribution of each State's population, particulary the proportion of the population residing in rural or medically underserved areas.

In large measure, the cost of a National Health Insurance Program could be borne by the savings gained from administrative efficiences and other cost control measures.

In fact, a report released last year by the General Accounting Office found that adoption of a single payer system like Canada's in the United States would save an estimated $67 billion a year in adiminstrative costs, far more than necessary to pay for insurance for all uninsured Americans.

Another study published by the New England Journal of Medicine found that we could save even more money if we were as efficient as Canada in administering our health care system, perhaps more than $100 billion a year.

I firmly believe that it will be the potential for cost control and cost savings which will drive the health care debate and drive health care reform.

And it is this potential for cost savings which is in large part responsible for the growing support—inside and outside Washington—for a single payer system because the fact is that there is no longer any serious debate that a single payer system offers the greatest potential for cost savings of any reform proposal.

It is this cost saving potential which has the ability to bring together unusual coalitions in support of a single payer system.

And what will be the cost of a national health care system?

The most realistic answer to this question is that we can achieve universal access through a national health care system for the same level of spending as today.

The money will be spent in different ways from today. We will save money in administrative costs, and we will plow that money back into medical care.

And the money will be raised in different ways from today. There will be no more spending for insurance premiums for covered benefits. There will be no more out-of-pocket spending. Instead, we will be publicly financing the system.

Yes, I'm talking about raising taxes to finance the system. But these new taxes will be offset by reduced private spending for health insurance. And these taxes will be dedicated to a national health trust fund to insure that these taxes are spent on health care, and only on health care.

So we will have higher taxes, but not higher spending for health care. In fact, many people will spend less for health care under a national single payer system.

For example, a typical family of four earning $27,400 would have a net savings of more than $1,400. A family of four earning $39,200 would have a net savings of more than $1,600. And a family of four earning $54,000 would have a net savings of $1,700.

This is very achievable.

The GAO report that I mentioned earlier estimated that we would save $67 billion in administrative costs in the first year of a single payer system.

The GAO also found that it would cost about $64 billion in additional spending to pay for insuring the uninsured and providing additional services to those currently with insurance. So there would be a net savings nationwide of about $3 billion.

A more recent study by the CBO, using some different assumptions from GAO, found that we would have a net savings of $26 billion under a single payer system. In other words, taking into account both the increased savings from administrative costs and increased spending to cover the uninsured and underinsured, we would save $26 billion a year.

Over time, our savings would be even more dramatic—because the system will provide us with a mechanism for drastically reducing the rate of increase for health care spending. In part, this is accomplished by providing that health care spending will be allowed to increase only as much as the annual percentage increase in GNP.

In 5 years, the plan would save the Nation over $900 billion in health care spending.

A National Health Insurance Program can live up to its billing. This is a program that can work.

It does work in our neighbor to the north, Canada. We need to study the Canadian example, learn from its successes and failures and use American innovation and technology to establish the finest—and most efficient and equitable—health system.

No one is saying we should adopt the Canadian system wholesale in the United States. We must preserve the strengths of our health care system—our HMO plans, our centers of excellence, our technological advances.

Now we have all heard some scare stories about the Canadian system. These stories have been greatly exaggerated.

The truth is, polls show Canadians to be more satisfied with their health care system than citizens in any other country. And polls show Americans to be the least satisfied.

What about the issue of rationing?

The truth is the United States already rations health care—in "irrational ways," according to the Journal of the American Medical Association. At present, we ration health care by ability to pay, by health status, and by employment status. People who cannot afford health insurance do not get the same health care as others. People who need health care the most because of serious illness are blacklisted; they cannot get private health insurance because of pre-existing conditions. And people who are self-employed or who work for or own small businesses or who are unemployed are often unable to get insurance.

Under a national health insurance system, we will waste billions and billions fewer dollars—billions now spent unnecessarily on bureaucracy and administration. And we will be able to spend this money on care.

A National Health Insurance Program would grant every citizen equal access to health care. Medical care would depend on a professional assessment of medical need rather than on insurance status. And the National Health Insurance Program would give us the framework for reasoned planning and decisionmaking about how to invest and spend our health care dollars.

In the Senate this session, the debate over reform has focused to a large extent on the HealthAmerican legislation introduced by the Democratic leadership, S. 1227.

I share the goals of the leadership bill—universal access to health care and cost containment.

But I have some different thoughts about how best to achieve these goals.

I am concerned about the HealthAmerica bill's linkage of health care coverage to employment status. This employer mandate, pay or play approach, can lead to a two-tier system which can be inefficient and inequitable.

An employer mandate bill like HealthAmerica also cannot control health care costs as efficiently as a single payer system. Without the ability to strictly control costs, I worry about our ability to pay for health insurance.

I am also concerned about the benefit package in HealthAmerica. There is not enough emphasis given to primary and preventive care. There is no coverage for long-term care. Nor is there coverage for prescription drugs.

All this said, however, HealthAmerica is a major step forward. Achieving universal access and some cost control through an employer mandate system may be an interim solution to our crisis.

And so I voted for HealthAmerica when it passed out of the Labor Committee in January. And I am particularly pleased to note that the bill was significantly changed—and strengthened—by the Labor Committee.

One amendment puts in place a system of mandatory cost containment—mandatory rate setting and other measures aimed at achieving expenditure targets for the nation as a whole and for specific health care sectors. A second amendment is one that I proposed which allows individual States to opt out of the employer mandate system and set up statewide single payer systems.

With these two amendments, HealthAmerica becomes a fundamentally improved bill.

Still, I believe the ultimate answer to our crisis of access and our crisis of cost is a national single payer system, a national health insurance program.

This national health insurance proposal won't pass Congress this year—but it is what we should be aiming for, what I will be fighting for, as we march forward.

And I will be working to improve this legislation, for this is certainly not my final word on health care reform.

I believe we need to give more thought to the delivery of services to ensure more efficient delivery of services, more emphasis on primary and preventive care and more emphasis on community-based care.

We also need to give more thought to how to eliminate unnecessary and inappropriate care, which accounts for billions upon billions of dollars of wasteful spending.

And we need to give more thought about how to define the package of mental health benefits. The bill I introduce today limits these benefits by days of care. But there is a tremendous amount of policy work underway right now on how to remove arbitrary limitations on these benefits while at the same time putting in place a system to protect against unnecessary treatment. And I know we will come up with a better solution to this issue.

Together we must work to improve and refine our idea.

Together we must work to solve our crisis of access.

Together we must work to solve our crisis of cost.

Together we must work together to make reform a reality.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2320

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as "Universal Health Care Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. NATIONAL HEALTH INSURANCE PROGRAM.

(a) REQUIREMENT.—The Public Health Service Act is amended—

(1) by redesignating title XXVII (42 U.S.C. 300cc et seq.) as title XXVIII; and

(2) by inserting after title XXVI the following new title:

"TITLE XXVII—NATIONAL HEALTH INSURANCE PROGRAM

"PART A—ELIGIBILITY AND ENTITLEMENT

"SEC. 2701. ELIGIBILITY AND ENTITLEMENT.

"(a) IN GENERAL.—Every individual who is a resident of the United States and is a citizen or national of the United States or lawful resident alien (as defined in subsection (c)) is entitled to health insurance benefits under this title for each month in which the individual meets such condition.

"(b) TREATMENT OF CERTAIN NONIMMIGRANTS.—

"(1) IN GENERAL.—The Secretary may make eligible to enroll for coverage for health benefits under this title such classes of aliens admitted to the United States as nonimmigrants as the Secretary may provide.

"(2) CONSIDERATION.—In providing for eligibility under paragraph (1), the Secretary shall consider reciprocity in health care benefits offered to individuals described in subsection (a) who are nonimmigrants in other foreign states, and such other factors as the Secretary deems appropriate.

"(c) LAWFUL RESIDENT ALIEN DEFINED.—In this section, the term 'lawful resident alien' means an alien lawfully admitted for permanent residence and any other alien lawfully residing permanently in the United States under color of law, including an alien granted asylum or with lawful temporary resident status under section 210, 210A, or 245A of the Immigration and Nationality Act.

"SEC. 2702. ENROLLMENT.

"(a) IN GENERAL.—The Secretary shall provide a mechanism for the enrollment of individuals entitled to benefits under this title and, in conjunction with such enrollment, the issuance of a national health insurance card which may be used for purposes of identification and processing of claims for benefits under this title.

"(b) ENROLLMENT AT BIRTH OR IMMIGRATION.—The mechanism under subsection (a) shall include a process for the automatic enrollment of individuals at the time of birth in the United States or at the time of immigration into the United States or other acquisition of lawful resident status in the United States. Such mechanism shall also provide for the enrollment of eligible individuals as of January 1, 1994.

"PART B—BENEFITS

"SEC. 2711. SCOPE OF BENEFITS.

"(a) IN GENERAL.—Except as provided in the succeeding provisions of this part, the benefits provided to an individual by the program established by this title shall consist of entitlement to have payment made on the individual's behalf for benefits necessary or appropriate for the maintenance of health or for the diagnosis or treatment or rehabilitation following injury, disability or disease, as follows:

"(1) Inpatient and outpatient hospital care, except that treatment for a mental disorder and drug and alcohol abuse treatment services are subject to the special limitations described in paragraphs (11) and (12).

"(2) Services of health care professionals who are authorized to provide such services under State law, except that treatment for a mental disorder and drug and alcohol abuse treatment services are subject to the special limitations described in paragraphs (11) and (12).

"(3) Diagnostic testing services.

"(4) Pre-natal, post-natal and well-baby care.

"(5)(A) Preventive services in accordance with a schedule to be established by the Secretary in consultation with experts in preventive medicine and public health and taking into consideration those preventive services recommended by the Preventive Services Task Force and published as the Guide to Clinical Preventive Services. Such schedule shall include the periodicity with which the preventive services shall be provided, taking into consideration the cost-effectiveness of appropriate preventive care. At a minimum such schedule shall include—

"(i) well-child care;

"(ii) pap smears;

"(iii) mammograms;

"(iv) colorectal examinations; and

"(v) examinations for prostate cancer.

"(B) Such schedule shall be revised not less frequently than once every 5 years, in consultation with experts in preventive medicine and public health.

"(6) Prescription drugs and biologicals.

"(7) Dental care.

"(8) Vision care.

"(9) Nursing facility services.

"(10) Hospice care.

"(11)(A) Inpatient care for a mental disorder, limited to 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care according to a ratio established by the Secretary.

"(B) Outpatient psychotherapy and counseling for a mental disorder, limited to 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(i) is a physician; or

"(ii) meets standards established by the Secretary and is a duly licensed or certified clinical psychologist, clinical social worker, or equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services.

"(12) Drug and alcohol abuse or dependency treatment services provided under a treatment program approved by the State and meeting State qualification standards, subject to an annual limitation of 45 inpatient days and 20 outpatient visits.

"(13) Home and community-based services, limited to individuals—

"(A) over 18 years of age determined (in a manner specified by the Secretary)—

"(i) to be unable to perform, without the assistance of an individual, at least 2 of the following 5 activities of daily living (or who has a similar level of disability due to cognitive impairment)—

"(I) bathing;

"(II) eating;

"(III) dressing;

"(IV) toileting; and

"(V) transferring in and out of a bed or in and out of a chair; or

"(ii) due to cognitive or mental impairments, requires supervision because the individual behaves in a manner that poses health or safety hazards to himself or herself or others; or

"(B) under 19 years of age determined (in a manner specified by the Secretary) to meet such alternative standard of disability for children as the Secretary develops.

"(14) Such other medical or health care items or services as the Secretary determines to be appropriate.

"(b) NO DEDUCTIBLES OR COINSURANCE.—There shall be no coinsurance, deductibles, or copayments applicable to the covered benefits referred to in subsection (a).

"(c) CERTIFICATIONS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided with respect to eligible organizations under section 2772(a)(10), payment for services furnished an individual by a provider of services may be made only to providers of services which have entered into a participation agreement and only if the conditions described in section 1814(a) or 1835(a) of the Social Security Act have been met with respect to services to which such sections applied.

"(2) SPECIAL RULES.—In applying—

"(A) section 1814(a)(2)(B) of the Social Security Act as provided for under this subsection, in lieu of the certification described in that section with respect to post-hospital extended care services, there must be a certification with respect to nursing facility services that the services are or were required to be given because the individual needs or needed nursing care or skilled rehabilitation services which as a practice matter can only be provided in a nursing facility on an inpatient basis; and

"(B) section 1814(a)(2)(C) of such Act as provided for under this subsection, the certifications that the individual is or was confined to the individual's home and that the care be on an intermittent basis shall not apply.

"(3) CERTIFICATION FOR HOME AND COMMUNITY-BASED SERVICES.—With respect to home and community-based services, there shall be required a certification of the type described in section 1814(a) of the Social Security Act as to the facts that the individual provided the service is within the limitations described in subsection (a)(13) and, except for the provision of such services, is at risk of institutionalization.

"(d) STATE FINANCING OF SUPPLEMENTAL SERVICES.—An individual State, acting under section 2731(c), may at the option of such State provide for the coverage of additional health benefits or for the expanded eligibility of persons entitled to health insurance benefits. The cost of any such additional benefits or expanded eligibility shall be absorbed by the individual State and not by the Federal Government.

"(e) MENTAL HEALTH.—

"(1) COMMISSION.—The Secretary shall establish a commission to study and prepare and submit to the appropriate committees of Congress a report containing recommendations concerning the manner in which the benefits for mental disorders and drug and alcohol abuse or dependency treatment services should be modified to best meet the objectives of this title.

"(2) COMPOSITION.—The Secretary shall, not later than January 1, 1993, appoint individuals to serve on the commission established under paragraph (1). Such commission shall be composed of—

"(A) health care economists,

"(B) representatives of the multi-disciplinary range of providers of the services described in paragraph (1);

"(C) consumers of such services; and

"(D) advocacy groups representing consumers of such services.

"SEC. 2712. EXCLUSIONS.

"(a) IN GENERAL.—Except as otherwise provided in this section, the provisions of section 1862 of the Social Security Act shall apply to payments made under this title in the same manner as such provisions apply to payments made under part A or part B of title XVIII of such Act.

"(b) EXCEPTIONS.—Under this title, the limitations specified in paragraphs (7) and (12) of section 1862(a) of the Social Security Act and the provisions of section 1862(b) of such Act shall not apply, and the limitations under paragraph (1) of such section 1862(b) shall not apply to preventive health services that the Secretary determines to be appropriate for the prevention of illness or disease.

"SEC. 2713. APPROVED PRESCRIPTION DRUGS, DEVICES AND EQUIPMENT.

"(a) ESTABLISHMENT OF LIST.—The Secretary shall establish a list of approved prescription drugs and biologicals, durable medical equipment and therapeutic devices and equipment (including eyeglasses, hearing aids, and prosthetic appliances), that the Secretary determines are important for the maintenance or restoration of health or of

employability or self-management and eligible for coverage under this title.

"(b) CONSIDERATIONS AND CONDITIONS.—In establishing the list under subsection (a), the Secretary shall take into consideration the efficacy, safety and cost of each item contained on such list, and shall attach to any item such conditions as the Secretary determines appropriate with respect to the circumstances under which, or the frequency with which, the item may be prescribed.

"(c) EXCLUSIONS.—The Secretary may exclude reimbursement under this title for ineffective, unsafe or overpriced products where better alternatives are determined to be available.

"PART C—PAYMENTS

"SEC. 2721. PAYMENTS FOR HOSPITAL SERVICES AND NURSING FACILITY SERVICES.

"(a) BASED ON APPROVED BUDGET.—

"(1) IN GENERAL.—In the case of hospital services and nursing facility services, payment under this title shall be based on an annual budget for the operating expenses of the institution that shall be submitted to, and approved by, the Secretary (or the State in accordance with section 2731(c)) in a form and manner specified by the Secretary. Such approved budgets—

"(A) shall take into account amounts that are reasonable and necessary in the efficient provision of necessary hospital services and nursing facility services;

"(B) shall not include amounts properly allocable to services that are not hospital services or nursing facility services, respectively;

"(C) shall be consistent with the national and State health budgets established by the Secretary; and

"(D) shall not include capital-related items and direct medical education.

Payment under such budget shall only be changed to reflect changes in the volume or type of services if such changes are significantly different than the volume or type of such services assumed in the approval of the budget.

"(2) PERIODIC PAYMENTS.—The provisions of section 1815 of the Social Security Act (other than subsection (e)) shall apply to payments under this title in the same manner as they applied to payments under part A of title XVIII of such Act.

"(3) SUBMITTAL TO STATE ADVISORY BOARDS.—Each hospital, nursing facility, or other institutional provider shall submit the budget of such institution to the State advisory board (appointed under section 2736) for the State in which the institution is located prior to the approval of such budget by the Secretary (or the State under section 2731(c)).

"(b) BUDGETING FOR CAPITAL AND MEDICAL EDUCATION EXPENDITURES.—Items in budgets prepared under subsection (a) for capital-related items and for direct medical education shall only be approved if such amounts are consistent with the portion of the national and State health budgets established under subsections (c) and (d) of section 2732.

"(c) MODIFICATION OF THE PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—The Prospective Payment Assessment Commission, instead of conducting activities described in section 1886 of the Social Security Act, shall advise the Secretary concerning the approval of budgets under this section and shall annually prepare and submit to the Congress and the Secretary a report containing the recommendations of the Commission concerning—

"(1) the most appropriate manner in which the budget approval process should be modified to best meet the objectives of this title; and

"(2) global budgets and fee schedules established under section 2723 for the payment of facility-based outpatient services.

"SEC. 2722. PAYMENTS FOR OTHER FACILITY-BASED SERVICES.

"(a) IN GENERAL.—Payment under this title for home health services, hospice care, home and community-based services, and facility-based outpatient services (other than those described in section 2721) shall be based on—

"(1) a budget (of the type described in section 2721(a)(1)) for the facility that is submitted to, and approved by, the Secretary (or State under section 2731(c)) in a form and manner specified by the Secretary;

"(2) a fee schedule established by the Secretary;

"(3) a capitation payment schedule that is submitted to, and approved by, the Secretary (or State under section 2731(c); or

"(4) an alternative prospective payment method that is submitted to, and approved by, the Secretary (or State under section 2731(c)),

as selected by the facility for each reimbursement period and approved by the Secretary (or State under section 2731(c)). Such payments shall not include payments for capital-related items, except as provided in subsection (b).

"(b) CONSIDERATION IN ESTABLISHMENT OF FEE SCHEDULES, ETC.—A fee schedule, capitation schedule or alternative prospective payment method established under subsection (a)(2) for facility-based outpatient services shall—

"(1) take into account the payment amounts established under section 2723 for any related professional services; and

"(2) provide an amount for capital-related costs if the costs are consistent with the national and State capital budgets established under section 2732(c), but only in the case of services either—

"(A) for which payment of a facility-related component is provided under title XVIII of the Social Security Act; or

"(B) for which the Secretary determines that such a component is appropriate to assure access to outpatient services in appropriate facilities.

"(c) LIMIT ON PAYMENT FOR HOME AND COMMUNITY-BASED SERVICES.—Payments under this title for home and community-based services with respect to any individual may not exceed 65 percent of the average amount of payment that would have been made for the individual if the individual were a resident of a nursing facility in the same area in which the services are provided.

"(d) LONG-TERM CARE PAYMENT REVIEW COMMISSION—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The Director of the Congressional Office of Technology Assessment shall provide for the appointment of a Long-Term Care Payment Review Commission (hereafter referred to in this subsection as the 'Commission') to be composed of individuals with national recognition for their expertise in health care economics and related fields for nursing facility services, home health services, hospice care, and home and community-based services.

"(B) APPOINTMENTS.—Members of the Commission shall first be appointed not later than January 1, 1993, for a term of 3 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than one-third of the number of members expire in any year. Appointments shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

"(C) MEMBERSHIP.—Members of the Commission shall include health care economists, representatives of providers and manufacturers of such services, and consumers of such services.

"(2) FUNCTIONS.—The Commission shall advise the Secretary concerning the payment amounts for long-term care established under section 2721 and this section and shall annually prepare and submit to Congress and the Secretary an annual report containing the recommendations of the Commission concerning the manner in which global budgets and fee schedules should be modified to best meet the objectives of this title.

"(e) ENSURING THE PROVISION OF OPERATING FUNDS.—In determining the rate of reimbursement under this section, and in developing and implementing a payment system for providers, the Secretary (or the State in accordance with section 2731(c)) shall permit a reasonable, fixed rate of return, independent of those operating expenses necessary to fulfill the objectives of this title. The Secretary (or the State in accordance with section 2731(c)) shall ensure that no portion of payments received under this section, in excess of that portion attributable to such reasonable rate of return, shall be diverted to profits.

"SEC. 2723. PAYMENTS FOR SERVICES OF HEALTH CARE PROFESSIONALS.

"(a) IN GENERAL.—Payment under this title for the services of health care professionals shall be based on a fee schedule established by the Secretary.

"(b) USE OF NATIONAL RELATIVE VALUE SCALE.—Such schedule shall—

"(1) vary the payment amount among different services based on the relative value of the input factors to provide the services;

"(2) vary among different areas, for the portion of the payment relating to the goods and services provided, based on reasonable differences in the prices for goods and services among the different areas; and

"(3) be consistent with the national health budget established by the Secretary.

In establishing such schedule, the Secretary shall take into account the fee schedules established under section 1848 of the Social Security Act, without regard to the update factor provided under that section.

"(c) MODIFICATION OF THE PHYSICIAN PAYMENT REVIEW COMMISSION.—

"(1) REDESIGNATION.—The Commission established under section 1845 of the Social Security Act is renamed the 'Professional Payment Review Commission' (hereafter referred to in this subsection as the 'Commission') and is continued for purposes of carrying out this subsection.

"(2) ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall increase the membership of the Commission to such number as may be necessary to include the representation of nurses and other health care professionals whose services are paid for on the basis of a relative-value fee schedule established under this section, and shall consult with the Physician Payment Review Commission, the General Health Care Review Commission, and other appropriate provider organizations.

"(3) ALTERNATIVE FUNCTIONS.—The Commission, instead of conducting activities of the type described in section 1845 of the Social Security Act, shall advise the Secretary concerning the fee schedules established

under this section and shall annually prepare and submit to Congress and the Secretary a report containing recommendations concerning the manner in which fee schedules should be modified to best meet the objectives of this title.

"SEC. 2724. PAYMENTS FOR OTHER ITEMS AND SERVICES.

"(a) IN GENERAL.—Payment under this title for items and services not described in section 2723 shall be made on the basis of fee schedules established by the Secretary consistent with the national health budget established by the Secretary. In establishing such schedules, the Secretary shall consult with the Commission established under subsection (b).

"(b) GENERAL HEALTH CARE PAYMENT REVIEW COMMISSION.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The Director of the Congressional Office of Technology Assessment shall provide for the appointment of a General Health Care Payment Review Commission (hereafter referred to in this subsection as the 'Commission'), to be composed of individuals with national recognition for their expertise in health care economics and related fields for items and services for which payment is made under a fee schedule established under this section, representatives of providers and manufacturers of such items and services, and representatives of consumers of these items and services.

"(B) APPOINTMENTS.—Members of the Commission shall first be appointed not later than January 1, 1993, for a term of 3 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than one-third of the number of members expire in any year. Appointments shall be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

"(C) MEMBERSHIP.—Membership on the Commission shall include health care economists, representatives of providers and manufacturers of such items and services, and representatives of consumers of these items and services.

"(2) FUNCTIONS.—The Commission shall advise the Secretary concerning the fee schedules established under this section and shall annually prepare and submit to Congress and the Secretary a report containing recommendations on the manner in which fee schedules should be modified to best meet the objectives of this title.

"SEC. 2725. USE OF FISCAL AGENTS.

"(a) IN GENERAL.—The Secretary (or the State in accordance with section 2731(c)), through the use of competitive bidding procedures, may enter into such contracts with qualified entities as the Secretary (or the State in accordance with section 2731(c)) determines to be appropriate for the processing of claims under this title. The Secretary may provide for a process for entering into separate contracts under this section for claims processing under this title, but in no case may more than one contract be entered into for any State.

"(b) FUNCTIONS.—Under contracts entered into under this section, the entity with which the contract is entered into may carry out such functions as are authorized for fiscal intermediaries and carriers under title XVIII of the Social Security Act as the Secretary (or the State in accordance with section 2731(c)) determines to be appropriate.

"SEC. 2726. MANDATORY ASSIGNMENT.

"(a) IN GENERAL.—Payments for benefits under this title shall constitute payment in full for such benefits and the entity furnishing an item or service for which payment is made under this title shall accept such payment as payment in full for the item or service and may not accept any payment or impose any charge for any such item or service other than accepting payment in accordance with this title.

"(b) ENFORCEMENT.—If an entity knowingly and willfully charges an individual for an item or service or accepts payment in violation of subsection (a), the Secretary may apply sanctions against the entity in the same manner as sanctions could have been imposed under section 1842(j)(2) of the Social Security Act for a violation of section 1842(j)(1) of such Act.

"SEC. 2727. NO PAYMENTS TO MOST FEDERAL PROVIDERS OF SERVICES.

"No payment may be made under this title to any Federal provider of services (other than such a provider of the Indian Health Service and other than such a provider of the Department of Veterans Affairs) which the Secretary determines is providing services to the public generally as a community institution or agency, and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

"SEC. 2728. REPORTING SYSTEMS.

"(a) ESTABLISHMENT OF SYSTEM.—Not later than January 1, 1993, the Secretary shall establish a system for the reporting, by hospitals and other providers of services under this title, of information (including information on patient care) sufficient to provide for the review and approval of budgets of hospitals, skilled nursing facilities, and other facilities under this part and the development of fee schedules for services under this part.

"(b) BASIS.—The system established under subsection (a) shall be based on the standardized electronic cost reporting format placed into effect under section 1886(f)(1)(B) of the Social Security Act and the uniform reporting standards established under section 4007(c) of the Omnibus Budget Reconciliation Act of 1987.

"(c) REQUIREMENT.—Notwithstanding any other provision of this title, a hospital or other provider of services under this title that fails to file reports on a timely basis in accordance with the system established under this section shall not be eligible for payments under this title.

"SEC. 2729. RURAL AND MEDICALLY UNDERSERVED AREAS.

"In establishing payment procedures for providers under this part the Secretary (or State under section 2731(c)) shall construct such schedules in a manner that would encourage providers to practice or locate in rural and medically underserved areas.

"PART D—ADMINISTRATION

"SEC. 2731. GENERAL PROVISIONS.

"(a) THROUGH HCFA.—The Secretary, acting through the Administrator of the Health Care Financing Administration, shall administer the program under this title.

"(b) USE OF STATE-LEVEL OFFICES.—The Secretary shall provide for the establishment or designation of an office in each State that shall be responsible for the administration of this title in that State.

"(c) USE OF STATES.—If a State submits a request to the Secretary to administer this title in that State, the Secretary shall provide for the State administration of the provisions of this title within that State as the Secretary determines appropriate to meet the objectives of this title, unless and until the State fails to comply with such requirements. A State with a request approved under this subsection shall have the authority to establish operating budgets, capitation rates or alternative prospective payment methods for providers in the State. Any State administering this title under a request approved under this subsection shall submit its State budget (including individual institutional budgets) to the Secretary to assure compliance with the national health budget and this title.

"SEC. 2732. NATIONAL AND STATE HEALTH BUDGETS.

"(a) IN GENERAL.—For each calendar year the Secretary shall establish a national health budget and, for each State, a State health budget that specifies—

"(1) the level and application of expenditures to be made under this title in the year in the United States and in the State, respectively; and

"(2) the amount in and source of revenues of the National Health Trust Fund in such year.

Each State health budget established by the Secretary under this subsection shall be based solely on—

"(A) the population of the State;

"(B) reasonable differences in the prices for goods and services;

"(C) any special social, environmental, or other condition affecting health status or the need for health care services; and

"(D) the geographic distribution of the State's population, particularly the proportion of the population residing in rural or medically underserved areas.

"(b) EXPENDITURE LEVEL.—The total level of expenditures to be specified in the national health budget under subsection (a) for a year may not exceed the level of expenditures for covered benefits under this title made in the year preceding the effective date of this title increased in a compounded manner for each succeeding year (up to the year involved) by the annual percentage increase in the gross national product for the preceding year.

"(c) INSTITUTIONAL CAPITAL BUDGET.—

"(1) IN GENERAL.—Each national health budget established under subsection (a) shall include an amount for total expenditures for capital-related items, provide for State capital budgets and specify the general manner in which such expenditures for capital-related items are to be distributed among the different types of facilities.

"(2) FACTORS.—Each State capital budget under this section shall be established based solely on—

"(A) the population of the State;

"(B) reasonable differences in the prices for goods and services, as such differences affect the prices of the appropriate capital goods;

"(C) any special social, environmental, or other condition affecting health status or the need for health care services; and

"(D) the geographic distribution of the State's population, particularly the proportion of the population residing in rural or medically underserved areas.

"(d) HEALTH TRAINING BUDGET.—Each national health budget established under subsection (a) shall include an amount for total expenditures for direct medical education expenses for institutions receiving payments under budgets approved under section 2721 and for facility-based outpatient services for which payments are made under section 2722. Such budgets shall specify the general manner in which such expenditures are to be

taken into account, shall be based on a national plan for training of medical personnel developed by the Secretary that shall emphasize training for primary and preventive care, and shall provide for State budgets for direct medical education expenses. Payments under such budgets for such expenditures shall take into account the method for payment for direct medical education expenses as described in section 1886(h) of the Social Security Act.

"SEC. 2733. NATIONAL HEALTH TRUST FUND.

"(a) ESTABLISHMENT.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the 'National Health Trust Fund' (hereafter in this section referred to as the 'Trust Fund') that shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) of the Social Security Act and such amounts as may be deposited in, or appropriate to, such fund as provided for in this part.

"(b) APPROPRIATIONS INTO TRUST FUND.—

"(1) TAXES.—There are hereby appropriated to the Trust Fund for each fiscal year (beginning with fiscal year 1994), out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 percent of—

"(A) the taxes imposed by sections 3101(b), 3101(c), 3111(b), and 3111(c) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after January 1, 1994, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages (such wages shall be certified by the Secretary of Health and Human Services on the basis of records of wages established and maintained by the Secretary of Health and Human Services in accordance with such reports);

"(B) the taxes imposed by sections 1401(b) and 1401(c) of such Code with respect to self-employment income reported to the Secretary of the Treasury on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such self-employment income (such self-employment income shall be certified by the Secretary of Health and Human Services on the basis of records of self-employment established and maintained by the Secretary of Health and Human Services in accordance with such returns); and

"(C) the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the application of the amendments made by section 3(a) of the Universal Health Care Act of 1992.

The amounts appropriated under the preceding sentence shall be transferred from time to time (but not less frequently than monthly) from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

"(2) STATE FUNDS.—There are hereby appropriated into the Trust Fund such amounts as are paid by States under section 2734.

"(3) LONG-TERM CARE/HEALTH CARE PREMIUMS.—There are also transferred and deposited into the Trust Fund long-term care/health care premiums imposed under section 3(g) of the Universal Health Care Act of 1992.

"(c) INCORPORATION OF PROVISIONS.—The provisions of subsections (b) through (i) of section 1817 of the Social Security Act shall apply to the Trust Fund under this title in the same manner as they applied to the Federal Hospital Insurance Trust Fund under part A of title XVIII of such Act.

"(d) INCORPORATION OF OTHER TRUST FUNDS.—Any amounts remaining in the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund after the settlement of claims for payments under title XVIII of the Social Security Act have been completed, shall be transferred into the National Health Trust Fund.

"SEC. 2734. STATE MAINTENANCE OF EFFORT PAYMENTS.

"(a) CONDITION OF COVERAGE.—Notwithstanding any other provision of this title, no individual who is a resident of a State is eligible for benefits under this title for a month in a calendar year, unless the State provides (in a manner and at a time specified by the Secretary) for payment to the National Health Trust Fund in the month of the sum of—

"(1) the product of $7.083 and the number of residents who are residents of the State and otherwise eligible for benefits under this title in the month; and

"(2) 85 percent of 1/12 of the amount specified in subsection (b) for the year;

or, if less, 1/12 of the limiting amount specified in subsection (c).

"(b) MAINTENANCE OF EFFORT AMOUNT.—The amount of payment specified in this subsection for a State for a year is equal to the amount of payment (net of Federal payments) made by a State under its State plan under title XIX of the Social Security Act for the year preceding the effective date of this title, increased for the year involved by the compounded sum of the percentage increase in the gross national product of the State for each year after that year and up to the year before the year involved.

"(c) LIMITING AMOUNT.—For purposes of subsection (a), the limiting amount specified in this subsection—

"(1) for 1994, is the total amount of payment made by a State (net of any Federal payments made to the State) for health care in 1993; or

"(2) for any subsequent year, is the amount specified in this subsection for the State for the previous year increased for the year involved by the compounded sum of the percentage increase in the gross national product of the State for each year after 1992 and up to the year before the year involved.

"SEC. 2735. NATIONAL ADVISORY BOARD.

"(a) IN GENERAL.—The Director of the Congressional Office of Technology Assessment (hereafter in this section referred to as the 'Director' and the 'Office', respectively) shall provide for the appointment of a National Health Advisory Board (hereafter in this section referred to as the 'Board') to advise the Secretary respecting the implementation of this title. Members of the Board shall first be appointed no later than January 1, 1992, for a term of 3 years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than 7 members expire in any year.

"(b) COMPOSITION.—The Board shall be composed of 21 individuals, appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service). Such individuals shall include persons with national recognition for their expertise in health and related fields, physicians and other health professionals, administrators of health care facilities, providers of nonprofessional items and services, health care economists, and representatives of consumers of health care.

"SEC. 2736. STATE ADVISORY BOARDS.

"(a) APPOINTMENT.—

"(1) IN GENERAL.—For each State, the Secretary (or the Governor, in accordance with section 2731(c)) shall provide for appointment of a State advisory board (hereafter referred to in this section as the 'board') to advise the Secretary respecting the implementation of this title in the State.

"(2) BUDGET REVIEW.—Each board shall review, and submit comments to the Secretary concerning, budgets of hospitals, nursing facilities, and other institutional providers in the State submitted for approval by the Secretary. Such review shall take into account the State health budgets to be established by the Secretary under section 2732.

"(b) COMPOSITION.—Each board shall be composed of 15 individuals, and shall include individuals who have expertise in health care as well as representatives of consumers, providers, and the State government. Each member shall be appointed for a term of 3 years, except that members first appointed to each such board shall be appointed for such shorter terms as will assure (on a continuing basis) that the terms of no more than 5 members expire in any year.

"(c) CONSULTATION.—Each board shall conduct its activities in consultation with the Governor of the State involved.

"PART E—MISCELLANEOUS

"SEC. 2771. DEFINITIONS.

"(a) INCORPORATION OF MEDICARE DEFINITIONS.—Except as otherwise provided in this section, the definitions contained in section 1861 of the Social Security Act (other than subsections (v), (y), and (z)) shall apply for purposes of this title in the same manner as such definitions applied for purposes of title XVIII of such Act.

"(b) ADDITIONAL DEFINITIONS.—As used in this title:

"(1) HOME AND COMMUNITY-BASED SERVICES.—The term 'home and community-based services' means the services described in paragraphs (1) through (9) of section 1929(a) of the Social Security Act provided by an entity certified as meeting the applicable standards specified in subsections (f), (g), and (h) of section 1929 of such Act pursuant to a plan of care.

"(2) NURSING FACILITY SERVICES.—The term 'nursing facility services' has the meaning given the term extended care services in section 1861(h) of the Social Security Act if the word 'skilled' were omitted throughout.

"(3) NURSING FACILITY.—The term 'nursing facility' has the meaning given such term in section 1819(a) of the Social Security Act if paragraph (1) of section 1919(a) of such Act were substituted for paragraph (1) of that section.

"SEC. 2772. INCORPORATION OF MISCELLANEOUS MEDICARE-RELATED PROVISIONS.

"(a) PROVISIONS IN TITLE XVIII.—The following provisions of the Social Security Act shall apply to this title in the same manner as they applied to title XVIII of such Act as of the date of the enactment of this title:

"(1) Section 1819 (relating to requirements for, and assuring quality of care in, skilled nursing facilities), except that—

"(A) any reference in the section to a 'skilled nursing facility' is deemed a reference to a 'nursing facility'; and

"(B) the term 'nursing facility' has the meaning given such term in section 1919(a).

"(2) Section 1846 (relating to intermediate sanctions for providers of clinical diagnostic laboratory tests).

"(3) Sections 1863 through 1865 (relating to consultation with State agencies and other organizations to develop conditions of participation for providers of services, use of State agencies to determine compliance by providers of services with conditions of participation, and effect of accreditation).

"(4)(A) Subject to subparagraph (B), section 1866 (relating to agreements with providers of services).

"(B)(i) The provisions of section 1866(a)(1)(N) shall not apply.

"(ii) Under section 1866(a)(2), a provider of services may not impose any charge for covered items and services under this title.

"(iii) In the case of a hospital, the provider agreement under section 1866 shall prohibit a hospital from denying care to any individual on any ground other than the hospital's inability to provide the care required.

"(5) Section 1867 (relating to examination and treatment for emergency medical conditions and women in labor).

"(6) Section 1869 (relating to determinations and appeals).

"(7) Section 1870 (relating to overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals).

"(8) Sections 1871 through 1874 (relating to regulations, application of certain provisions of title II of the Social Security Act, designation of organization or publication by name, and administration).

"(9)(A) Subject to subparagraph (B), section 1876 (relating to payments to health maintenance organizations and competitive medical plans) shall apply to individuals entitled to benefits under this title in the same manner as it applies to individuals entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act.

"(B) In applying section 1876 under this title—

"(i) the provisions of such section relating only to individuals enrolled under part B of title XVIII of the Social Security Act shall not apply;

"(ii) subject to subparagraph (C), any reference to a Trust Fund established under title XVIII of such Act and to benefits under such title is deemed a reference to the National Health Trust Fund and to benefits under this title;

"(iii) subject to subparagraph (C), the adjusted average per capita cost and adjusted community rate shall be determined on the basis of benefits under this title; and

"(iv) subsection (f) shall not apply.

"(C) For purposes of subparagraph (B), benefits under this title may, at the option of an eligible organization, not include benefits for nursing facility services that are not post-hospital extended care services and benefits for home and community-based services.

"(10) Section 1877 (relating to limitation on certain physician referrals).

"(11) Section 1878 (relating to the provider reimbursement review board), except that the hearings pursuant to such section shall be on the approval of budgets under section 2721 of this title rather than the determination of payment amounts under title XVIII of the Social Security Act.

"(12) Section 1891 (relating to conditions of participation for home health agencies; home health quality).

"(13) Section 1892 (relating to offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contract).

"(b) TITLE XI PROVISIONS.—The following provisions of the Social Security Act shall apply to this title in the same manner as they applied to title XVIII of such Act:

"(1) Sections 1124, 1126, and 1128 through 1128B (relating to fraud and abuse).

"(2) Section 1134 (relating to nonprofit hospital philanthropy).

"(3) Section 1138 (relating to hospital protocols for organ procurement and standards for organ procurement agencies).

"(4) Section 1142 (relating to research on outcomes of health care services and procedures), except that any reference in such section to a Trust Fund is deemed a reference to the National Health Trust Fund.

"(5) Part B of title XI of the Social Security Act (relating to peer review of the utilization and quality of health care services).

"(c) OTHER PROVISIONS.—The provisions of subsections (g) and (i) of section 201 of the Social Security Act shall apply to this title and the National Health Trust Fund in the same manner as they applied to title XVIII of such Act and the Federal Hospital Insurance Trust Fund.

"SEC. 2773. PRIVATE HEALTH INSURANCE.

"Private insurance for health care services may be offered or sold to cover only those health care benefits not covered under this title.".

(b) CONFORMING AMENDMENTS.—

(1) Sections 2701 through 2714 of the Public Health Service Act (42 U.S.C. 300cc through 300cc–15) are redesignated as sections 2801 through 2814, respectively.

(2) Sections 465(f) and 497 of such Act (42 U.S.C. 286(f) and 289(f)) are amended by striking out "2701" each place that such appears and inserting in lieu thereof "2801".

SEC. 3. FINANCING.

(a) INCREASE IN TOP CORPORATE INCOME TAX RATE.—

(1) IN GENERAL.—subparagraph (C) of section 1(b)(1) of the Internal Revenue Code of 1986 (relating to tax imposed on corporations) is amended by striking "34 percent" and inserting "38 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1995.

(b) INCREASE IN INDIVIDUAL INCOME TAXES.—

(1) IN GENERAL.—Section 1 of such Code (relating to tax imposed) as amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400.	$4,867.50, plus 30% of the excess over $32,450.
Over $78,400 but not over $200,000.	$18,652.50, plus 34% of the excess over $78,400.
Over $200,000	$59,996.50 plus 38% of the excess over $200,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $26,050	15% of taxable income.
Over $26,050 but not over $67,200.	$3,907.50, plus 30% of the excess over $26,500.
Over $67,200 but not over $171,500.	$16,252.50, plus 34% of the excess over $67,200.
Over $171,500	$51,714.50, plus 38% of the excess over $171,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 770) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $19,450	15% of taxable income.
Over $19,450 but not over $47,050.	$2,917.50, plus 30% of the excess over $19,450.
Over $47,050 but not over $120,000.	$11,197.50, plus 34% of the excess over $47,050.
Over $120,000	$36,000.50, plus 38% of the excess over $120,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $16,225	15% of taxable income.
Over $16,225 but not over $39,200.	$2,433.75, plus 30% of the excess over $16,225.
Over $39,200 but not over $100,000.	$9,326.25, plus 34% of the excess over $39,200.
Over $100,000	$29,998.25, plus 38% of the excess over $100,000.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $5,450	15% of taxable income.
Over $5,450 but not over $14,150.	$817.50, plus 30% of the excess over $5,450.
Over $14,150 but not over $25,000.	$3,427.50, plus 34% of the excess over $14,150.
Over $25,000	$7,116.50, plus 38% of the excess over $25,000.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1995.

(c) INCREASE IN EMPLOYER HOSPITAL INSURANCE TAX; REPEAL OF DOLLAR LIMITATION ON AMOUNT OF WAGES SUBJECT TO EMPLOYEE AND EMPLOYER HOSPITAL INSURANCE TAXES.—

(1) EMPLOYEE TAX.—Subsection (b) of section 3101 of such Code is amended by striking "equal to" and all that follows and inserting "equal to 1.45 percent of the wages (as defined in section 3121(a) without regard to paragraph (1) thereof) received by him with respect to employment (as defined in section 3121(b)).".

(2) EMPLOYER TAX.—Subsection (b) of section 3111 of such Code is amended by striking "equal to" and all that follows and inserting "equal to 7.5 percent of the wages (as defined in section 3121(a) without regard to paragraph (1) thereof) paid by him with respect to employment (as defined in section 3121(b)).".

(3) SELF-EMPLOYMENT TAX.—Subsection (b) of section 1401 of such Code is amended by striking "a tax as follows:" and all that follows and inserting "a tax equal to 7.5 percent of the amount of the self-employment income (as defined in section 1402(b) without regard to paragraph (1) thereof) for such taxable year.".

(4) RAILROAD RETIREMENT TAXES.—Subparagraph (A) of section 3231(e)(2) of such Code is

amended by adding at the end thereof the following new clause:

"(iii) LIMITATION NOT TO APPLY TO TAXES EQUIVALENT TO HOSPITAL INSURANCE TAXES.—Clause (i) shall not apply to—

"(I) so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and

"(II) so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b).".

(5) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 1402 of such Code is amended by striking "the applicable contribution base (as determined under subsection (k))" and inserting "the contribution and benefit base (as determined under section 230 of the Social Security Act)".

(B) Section 1402 of such Code is amended by striking subsection (k).

(C) Paragraph (1) of section 3121(a) of such Code is amended—

(i) by striking "applicable contribution base (as determined under subsection (x))" each place it appears and inserting "contribution and benefit base (as determined under section 230 of the Social Security Act)", and

(ii) by striking "such applicable contribution base" and inserting "such contribution and benefit base".

(D) Section 3121 of such Code is amended by striking subsection (x).

(E) Clause (i) of section 3231(e)(2)(B) of such Code is amended to read as follows:

"(i) TIER 1 TAXES.—Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.".

(F) Paragraph (3) of section 6413(c) of such Code is amended to read as follows:

"(3) SEPARATE APPLICATION FOR HOSPITAL INSURANCE TAXES.—Paragraphs (1) and (2) shall not apply to—

"(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

"(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b).".

(G) Sections 3122 and 3125 of such Code are each amended—

(i) by striking "section 3111" each place it appears and inserting "section 3111(a)", and

(ii) by striking "applicable contribution base limitation" and inserting "contribution and benefit base limitation".

(6) EFFECTIVE DATE.—The amendments made by this subsection shall apply to 1995 and later calendar years.

(d) ADDITIONAL STATE AND LOCAL EMPLOYEES SUBJECT TO HOSPITAL INSURANCE TAX.—

(1) IN GENERAL.—Paragraph (2) of section 3121(u) of such Code is amended by striking subparagraphs (C) and (D).

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to remuneration paid after December 31, 1994.

(e) INCREASE IN INCOME TAXES ON SOCIAL SECURITY BENEFITS.—

(1) INCREASE IN AMOUNT OF BENEFITS TAKEN INTO ACCOUNT.—Subsections (a) and (b) of section 86 of such Code is amended by striking "one-half" each place it appears and inserting "85 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1994.

(f) SECTION 15 NOT TO APPLY.—No amendment made by this section shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(g) LONG-TERM CARE/HEALTH CARE PREMIUM FOR THE ELDERLY.—

(1) IN GENERAL.—Except as provided in paragraph (2), each individual who at any time in a month is 65 years of age or older and is eligible for benefits under title XXVII of the Public Health Service Act in the month shall pay a long-term care/health care premium for the month of $55.

(2) EXCEPTION FOR LOW-INCOME ELDERLY.—The Secretary of Health and Human Services shall provide a process whereby individuals with an adjusted gross income which does not exceed $8,500 (or $10,700 in the case of joint adjusted gross income in the case of a married individual) are not liable for the premium imposed under paragraph (1).

(3) COLLECTION OF PREMIUM.—The premium imposed under this subsection shall be collected in the same manner (including deduction from Social Security checks) as the premium imposed under part B of title XVIII of the Social Security Act was collected under section 1840 of such Act as of the date of the enactment of this Act.

(4) DEPOSIT INTO NATIONAL HEALTH TRUST FUND.—Premiums collected under this subsection shall be transferred to and deposited into the National Health Trust Fund in the same manner as premiums collected under section 1840 of the Social Security Act were transferred and deposited into the Federal Supplementary Medical Insurance Trust Fund.

(h) SENSE OF THE SENATE.—It is the sense of the Senate that the chairman of the Committee on Finance of the Senate should recommend to the Senate additional provisions with respect to the Internal Revenue Code of 1986 that may be necessary to assist in meeting the funding requirements of this Act.

SEC. 4. TERMINATION OF OTHER PROGRAMS.

(a) MEDICARE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no benefits shall be available under title XVIII of the Social Security Act for any item or service furnished after December 31, 1994.

(2) TRANSITION.—In the case of inpatient hospital services and extended care services during a continuous period of stay which began before January 1, 1995, and which had not ended as of such date, the Secretary of Health and Human Services shall provide for continuation of benefits under title XVIII of the Social Security Act until the end of the period of stay.

(b) MEDICAID.—No payments shall be made to a State under section 1903(a) of the Social Security Act with respect to medical assistance for items or services furnished after December 31, 1994.

(c) FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—No benefits shall be made available under chapter 89 of title 5, United States Code, for any part of a coverage period occurring after December 31, 1994.

(d) CHAMPUS.—No benefits shall be made available under sections 1079 and 1086 of title 10, United States Code, for items or services furnished after December 31, 1994, for which any payment may be made under title XXVII of the Public Health Service Act.

(e) VETERANS' BENEFITS.—No benefits shall be available under chapter 17 of title 38, United States Code, for items or services furnished after December 31, 1994, for which payment may be made under title XXVII of the Public Health Service Act, except that nothing in this subsection may be construed to decrease benefits or services, including exclusive use of veterans hospitals, that are available to veterans on the day prior to the date of enactment of this Act.

SEC. 5. EFFECTIVE DATE FOR BENEFITS.

Title XXVII of the Public Health Service Act shall apply to items and services furnished on or after January 1, 1995.

By Mr. AKAKA (for himself, Mr. HEFLIN, Mr. JOHNSTON, Mr. WALLOP, Mr. MITCHELL, Mr. MURKOWSKI, Mr. FORD, Mr. GARN, Mr. INOUYE, Mr. SHELBY, Mr. BINGAMAN, Mr. GRAHAM, and Mr. EXON):

S. 2321. A bill to increase the authorizations for the War in the Pacific National Historical Park, Guam, and the American Memorial Park, Saipan, and for other purposes; to the Committee on Energy and Natural Resources.

ADDITIONAL FUNDING FOR THE AMERICAN MEMORIAL PARK AND THE WAR IN THE PACIFIC PARK

• Mr. AKAKA. Mr. President, the summer of 1994 will mark the 50th anniversary of the capture of the Marianas Islands and the liberation of Guam, sites of two of the largest land battles of the Pacific campaign on what is now United States territory. Nearly 6,000 U.S. soldiers and civilians gave their lives in this conflict.

Today I am introducing legislation, along with Senators HEFLIN, JOHNSTON, WALLOP, MITCHELL, MURKOWSKI, FORD, GARN, INOUYE, SHELBY, BINGAMAN, GRAHAM, and EXON to ensure that appropriate facilities are established at the two national historical parks in the Pacific which commemorate the sacrifices of United States Armed Forces during World War II. With these facilities in place, we will have an appropriate site to stage ceremonies in the summer of 1994 honoring the brave soldiers who achieved victory as well as provide a lasting remembrance of these events for years to come.

Mr. President, in the publicity surrounding the activities at Pearl Harbor last December 7, we have perhaps overlooked another important semicentenary that will occur less than 3 years hence. In the summer of 1994, we will commemorate the 50th anniversary of the liberation of Guam and the capture of the Marianas Islands, including Saipan and Tinian, from Japanese forces during the latter stages of World War II. These dearly bought victories, in which thousands of soldiers and civilians on both sides gave their lives, are representative of the island-hopping campaign which characterized the unique, ferocious war in the Pacific theater, and which led to the eviction of enemy forces from strategic island groups in the Central and Southwest Pacific and, eventually, to the surrender of Japan.

Unfortunately, Mr. President, despite the significance of the Mariannas campaign, and in spite of the river of blood spilled there by American servicemen, Congress has provided only minimal funding to establish and maintain

these historic battlesites. As a consequence of our neglect, these national historical parks have been in a state of continuous disrepair. Rust corrodes the tanks and cannon that are on public display; weeds and grasses cover roads, walkways, and fences; historic battlefields are disappearing under dirt and vegetation; and graffiti mars visitor signs and the walls of the few existing park buildings.

These are national parks that ostensibly honor the memory of the approximately 5,700 United States troops killed or missing and the 21,900 wounded in the Marianas campaign, men like our own distinguished colleague from Alabama, Senator HEFLIN, who participated in these operations. Their families and descendants, as well as the thousands of marines and soldiers who survived unscathed, for whom the words Saipan, Tinian, and Guam are synonymous with courage, duty, and sacrifice, live in every corner of our Nation. Each of us probably has many constituents whose lives were directly affected by the fight to free Guam and invade Saipan and Tinian. Thus, each of us has a duty to ensure that those who fought for freedom on our behalf are properly honored—albeit belatedly, but honored nonetheless.

The 50th anniversary of these battles will soon be upon us. Unfortunately, little has been done to construct the facilities necessary for a proper interpretation of these watershed battles of the Pacific war. I fear that unless Congress enacts this legislation in the near future, the 50th anniversary of these battles will come as a grave disappointment to veterans returning to these sites just 2 years from now.

Mr. President, from now through 1994, I intend to join several other colleagues in a concerted effort to secure the funds necessary to render the Guam and Saipan parks presentable for the 50th anniversary of the Marianas campaign. The bill I am introducing today will raise the authorized funding levels for the American Memorial Park in Saipan and the War in the Pacific National Historical Park in Guam from the current level of $500,000 and $3 million, respectively, to $8 million each. As such, my legislation is an integral part of this effort. If my colleagues believe that what was worth fighting for in the Marianas in 1944 is now also worth honoring nearly 50 years later, I urge them to cosponsor this bill. If they believe that the manner in which we treat those who fought and died in our behalf is a reflection of our own national character, then I ask them to work with me to see these battlefield parks become a lasting memorial to the Marianas campaign.

Thank you, Mr. President. I ask consent that a copy of my bill as well as a short precis of the Marianas campaign, prepared by Robert Goldich of the Congressional Research Service, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2321

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) June 15 through August 10, 1994, marks the 50th anniversary of the Mariana campaign of World War II in which United States forces captured the Japanese islands of Saipan and Tinian and liberated the United States Territory of Guam from Japan;

(2) an attack during this campaign by the Japanese combined fleet, aimed at annihilating the United States forces that had landed on Saipan, led to the battle of the Philippine Sea, which resulted in a crushing defeat for the Japanese by United States naval forces and the destruction of the effectiveness of the Japanese carrier-based airpower;

(3) the recapture of Guam liberated one of the few pieces of United States territory that was occupied by the enemy during World War II and restored United States Government to more than 20,000 native Guamanians;

(4) units of the United States Army, Navy, Marine Corps, and Coast Guard fought with great bravery and sacrifice, suffering casualties of approximately 5,700 killed and missing and 21,900 wounded in action;

(5) United States forces succeeded in destroying all Japanese garrisons in Saipan, Tinian, and Guam, which resulted in Japanese military casualties of 54,000 dead and 21,900 taken prisoner;

(6) Guamanians, notably members of the Navy Insular Force Guard and volunteer militia, bravely resisted the invasion and occupation of their island, and ultimately assisted in the expulsion of Japanese forces from Guam;

(7) at the hands of the Japanese, the people of Guam—

(A) were forcibly removed from their homes;

(B) were relocated to remote sections of the island;

(C) were required to perform forced labor and faced other harsh treatment, injustices, and death; and

(D) were eventually placed in concentration camps and subjected to retribution when the liberation of their island became apparent to the Japanese;

(8) the seizure of the Mariana Islands severed Japanese lines of communication between Japan proper and those remaining Japanese bases and forces in the Central Pacific south of the Mariana Islands and in the South Pacific as well;

(9) the Mariana Islands provided large island areas on which advance bases could be constructed to support further operations against Japanese possessions and conquered territories such as Iwo Jima and Okinawa, the Philippines, Taiwan, and the south China coast, and ultimately against the Japanese home islands;

(10) the Mariana Islands provided, for the first time during the war, island air bases from which United States land-based airpower could reach Japan itself; and

(11) the air offensive staged from the Mariana Islands against Japanese cities and economic infrastructure helped shorten the war and vitiate the need for the invasion and capture of the Japanese home islands.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) an appropriate commemoration of the 50th anniversary of the Mariana campaign should be planned; and

(2) the Secretary of the Interior should take all necessary steps to ensure that two visitors centers to provide appropriate facilities for the interpretation of the events described in section 1 are completed, one at the War in the Pacific National Historical Park and one at the American Memorial Park, before June 15, 1994, the beginning of the 50th anniversary of the campaign.

SEC. 3. WAR IN THE PACIFIC NATIONAL HISTORICAL PARK.

Section 6(k) of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved August 18, 1978 (92 Stat. 493; 16 U.S.C. 410dd(k)), is amended by striking "$500,000" and inserting "$8,000,000".

SEC. 4. AMERICAN MEMORIAL PARK.

Section 5(g) of the Act entitled "An Act to authorize appropriations for certain insular areas of the United States, and for other purposes", approved August 18, 1978 (92 Stat. 492), is amended by striking "$3,000,000" and inserting "$8,000,000".

[From the Congressional Research Service, Oct. 30, 1991]

THE U.S. SEIZURE OF THE MARIANAS JUNE–AUGUST 1944[1]

(By Robert L. Goldich, Specialist in National Defense, Foreign Affairs and National Defense Division)

INTRODUCTION AND SUMMARY

Between June 15 and August 10, 1944, U.S. forces captured the Japanese islands of Saipan and Tinian, and liberated the U.S. territory of Guam—all together comprising some of the larger Mariana Islands—from the Japanese. U.S. casualties totalled approximately 5,700 killed and missing in action (KIA/MIA) and 21,900 wounded in action (WIA). The Japanese garrisons on all three islands were virtually annihilated, losing 54,000 dead and 2,900 prisoners. At the time of the ground operations, a major naval battle—the Battle of the Philippine Sea—was fought, which largely eliminated remaining Japanese naval airpower as well as sinking several major Japanese naval combatants.

The seizure of the Marianas severed Japanese lines of communication between Japan proper and those remaining Japanese bases and forces in the Central Pacific south of the Marianas and in the South Pacific as well. It provided, for the first time, island air bases from which U.S. land-based airpower could reach Japan itself. It provided large island areas on which advance bases could be constructed to support further operations against Japanese possessions and conquered territories such as Iwo Jima and Okinawa, the Philippines, Taiwan and the south China coast, and ultimately against the Japanese home islands. Finally, the recapture of Guam liberated one of the few pieces of U.S. territory that was actually conquered by the enemy during World War II and restored U.S. government to over 20,000 native Guamanians.

BACKGROUND

The Marianas were Spanish possessions prior to the Spanish-American War of 1898. In the aftermath of that war, the victorious United States annexed Guam, and the other two islands were sold by Spain to Germany in 1899. Japan, which participated in World

[1]See Major Works Consulted, below, for basic sources used in preparing this report.

War I on the side of the Allies, captured Saipan and Tinian from Germany in 1914 and retained control of them after World War I ended.

Planning for the possibility of a U.S.-Japanese conflict became a major preoccupation of the U.S. Armed Forces as soon as the United States became a major territorial power in the Pacific in 1898, with the acquisition of the Philippines, Guam, American Samoa, and Hawaii. It had long been recognized that the Marianas occupied a critical strategic location in any contingent naval war between the United States and Japan, occupying as they do the center of a quadrilateral whose defining points are the Japanese home islands, the Philippines, Hawaii, and New Guinea.

There was little doubt, therefore, after the swift Japanese advance into the South and Central Pacific in 1941–1942 that U.S. forces would have to seize the Marianas. The islands were a significant Japanese defensive bastion, and their central location, as well as their desirability as sites for U.S. bases, made it impossible to bypass them. The issue was when they could be attacked and taken. The Cairo-Tehran Conferences of late 1943, held between President Franklin D. Roosevelt, British Prime Minister Churchill, and Soviet leader Joseph Stalin, resulted in a planning schedule for invasion of the Marianas on October 1, 1944.

However, several U.S. Pacific victories enabled this schedule to be advanced by several months. Between November 1943 and February 1944 U.S. forces seized key Japanese bases in the Gilbert (Tarawa, Makin) and Marshall (Kwajalein, Roi-Namur, and Eniwetok) Islands, bringing U.S. bases to within slightly over 1,000 miles of the Marianas. It was also decided to bypass rather than attack major Japanese strongholds at Truk, in the Caroline Islands, south of the Marianas. Accordingly, in March 1944 the Joint Chiefs of Staff ordered that the Marianas attack begin on June 15, 1944. The invasion plans finalized in May 1944 called for Saipan to be assaulted on June 15; once Saipan was secure, Tinian, only three miles south of Saipan, would be seized. Tentatively, Guam would be invaded on June 18, 1944, only three days after the landings on Saipan.

SAIPAN

After the fall of the Marshall Islands in February 1944 the Japanese realized that the Marianas would almost certainly be the next American objective in the Central Pacific. Between February and May 1944 the week Japanese garrisons on Saipan, Tinian, and Guam were heavily reinforced with combat troops. U.S. submarines prevented some, but not most, Japanese troops and equipment sent to the islands from reaching their destination.

To seize Saipan from an estimated 18,000 Japanese (31,000 were actually on the island), the U.S. had earmarked the 2nd and 4th Marine divisions. The Army's 27th Infantry Division was in general reserve for all Marianas operations, but most planning assumed it would probably be employed on Saipan. The three divisions plus supporting units totalled 71,000 Marines and soldiers. The two Marine divisions would attack across beaches on the southwestern corner of the island. Once securely ashore, the 2nd Marine Division, on the left (north) would turn northwards and conquer northern Saipan, while the 4th Marine Division on the right (south) would seize the southern third of the island.

By June 15, 1944, 25,000 Japanese Army and 6,000 Navy troops were on Saipan. Those beaches deemed suitable by the Japanese for a U.S. amphibious landing were heavily fortified and mined, and guarded by powerful forces. At this stage of the war, Japanese defensive doctrine still stressed defeat of American landings on the beach, rather than fighting a costly delaying action against the Americans once they had landed (as would be the case later in the war in the Palau Islands, the Philippines, Iwo Jima, and Okinawa).

After two days of naval gunfire and aerial attacks on the Japanese fortifications and troop dispositions, the two Marine divisions made their amphibious landing on the Saipan beaches on the morning of June 15. Despite the preparatory bombardment, it soon became apparent that Japanese resistance was formidable. In fact, D-Day on Saipan involved some of the heaviest casualties sustained by any U.S. division, Army or Marine Corps, in a single day during the entire war. Japanese artillery, mortars, machine guns, and small arms, fired from well-fortified positions largely invisible to the Marines, took a heavy toll of the assault Marines. The 2nd Marine Division sustained about 1,600 casualties on June 15. This was almost as many as it lost on the first day at Tarawa, November 20, 1943, more than the 1st Marine Division lost on the first day at Peleliu on September 15, 1944, and comparable to the number of Marines killed or wounded in the 4th and 5th Marine Divisions on the first day at Iwo Jima, February 19, 1945. The 4th Marine Division lost "only" 900–1,000 men killed or wounded on the first day at Saipan. Nonetheless, the Marines were on the island to stay, and Japanese counterattacks the first night failed to dent their beachhead.

Between June 16 and June 21, the American forces seized the southern third of Saipan, except for a small pocket of Japanese resistance on the southeastern tip of the island at Nafutan Point. The two Marine divisions were then reoriented northwards, to attack and destroy the formidable Japanese positions in central Saipan. The Army's 27th Infantry Division was landed to reinforce the Marines, largely due to the heavy casualties suffered by the Marine divisions. In six days of battle, the 2nd Marine Division had sustained 2,500 casualties and the 4th Marine Division over 3,600.

Between June 22 and June 30, the three U.S. divisions slowly fought their way through heavily wooded, hilly areas which constituted the heart of Japanese resistance on Saipan. The 2nd Marine Division seized Mount Tapotchau, the commanding geographical feature on Saipan, in moving roughly 1½ miles in eight days; the 27th Division and the 4th Marine Division gained between two and five miles through terrain with accurate, unpleasant characterizations such as Death Valley and Purple Heart Ridge. In addition, on the night of 26–27 June, the Japanese pocketed at Nafutan Point broke out in a desperate banzai charge, attacking rear areas and artillery units and ultimately losing over 550 dead in a suicidal assault far behind the front lines of the main battle.

By June 30, the backbone of Japanese resistance in central Saipan had been broken. The Japanese withdrew to their final defensive lines in northern Saipan; patrols ranged several thousands yards to the front of the American lines but found only small groups of the enemy. However, the two Marines divisions had paid dearly for their successes. In two weeks of combat, the 2nd and 4th Marine Divisions had each sustained 4,500 casualties. Because 80–90% of all losses were incurred by the 6,400 Marines in each division's 27 rifle companies—the basic close-in infantry fighting units—these figures indicate that those rifle companies had lost almost two-thirds of their men since D-Day. Because no Marine infantry replacements had yet arrived, Marines from support units were channeled into the infantry to replace casualties. Although the Army's 27th Division had not participated in the costly D-Day landing, it had lost almost 1,900 men itself.

Between July 1 and July 7, the 2nd Marine Division was withdrawn from combat, because the U.S. command wanted it to begin preparing for the invasion of Tinian. The 4th Marine Division and the 27th Division continued attacking the Japanese, and pocketed those remaining in the northern tip of the island. The last days of the Saipan battle were marked by two horrific developments. First, early on the morning of July 7, thousands of Japanese launched a suicidal mass attack on two isolated battalions of the 27th Division. "The soldiers fought for their lives as tremendous masses of the enemy flooded into a 300-yard gap between the battalions, discovered by enemy patrols the night before."[2] Overrunning the two battalions, the Japanese charged south into American artillery positions; the Americans fired their guns pointblank into the Japanese until they ran out of ammunition and the numerical weight of the Japanese assault was too great. The artillerymen then disabled their guns and retreated south, where they reached blocking positions held by other Army troops and Marines. The banzai charge cost the two Army infantry battalions 400 dead and 500 wounded (probably well over 50% of their strength); over 4,300 Japanese corpses were counted.

Second, in the aftermath of the continuing advance of the Marines (the Army's 27th Division was withdrawn into reserve after the banzai charge), with virtually all of the island in American hands, the Japanese repeated their World War II propensity for suicide rather than surrender. Not only did the few remaining Japanese soldiers and sailors kill themselves with their weapons as often as they would fire on U.S. Marines, but the Marines witnessed terrible sights of suicidal Japanese civilians. At Marpi Point on the northwestern corner of the island, "Hundreds of Japanese civilians, fearful of the Americans, committed suicide by jumping from the seaside cliffs. Some took their children with them. Efforts to stop them fell upon ears deafened by Japanese propaganda. Fortunately, many civilians had previously surrendered amicably, entrusting their fate to Marine and Army civil affairs officers, and were grateful for the care and safety found in the internment camps."[3]

On July 9, after 25 days of battle, the U.S. command declared the island secured, although Japanese stragglers continued to be rounded up or killed until the end of the war—and for many years thereafter. U.S. casualties totalled 3,600 KIA and MIA and 13,100 WIA. About 2,000 Japanese prisoners were taken; the other 29,000 Japanese troops on the island were killed. Both U.S. and Japanese leaders tended to agree about the significance of the American victory. Marine Lt. Gen. Holland M. Smith, commander of the Saipan landing force, stated that the capture of Saipan was "the decisive battle of the Pacific offensive," and that its seizure

[2] Henry I. Shaw, Jr., Bernard C. Nalty, and Edwin T. Turnbladh. Central Pacific Drive. History of U.S. Marine Corps Operations in World War II. Volume III. Washington, Historical Branch, G-3 Division, Headquarters, U.S. Marine Corps. 1966: 340.

[3] Ibid.: 345.

"breached Japan's inner defense line, destroyed the main bastions, and opened the way to the home islands."[4] The verdict of Japanese Prime Minister Hideki Tojo, whose government was soon to fall—partly in response to the loss of the Marianas—was more succinct: "Hell is on us."

TINIAN

There was never any doubt that Tinian would have to be seized by U.S. forces. Only three miles south of Saipan, its continued possession by the Japanese would have left U.S. bases and facilities on the former island vulnerable to bombardment and raids. In addition, Tinian was relatively flat, and therefore the best suited of the Marianas for airfields from which U.S. long-range bombers could strike the Japanese home islands.

U.S. plans called for the 2nd and 4th Marine Divisions, after a two-week respite from the costly Saipan campaign, to launch an amphibious attack against Tinian. In reserve, also similar to the Saipan order of battle, was the 27th Infantry Division.

The major problem confronting the U.S. command was where on Tinian the assault Marines should land. The island has only three beaches "worthy of the name."[5] The largest and best-suited for amphibious operations is on the southwestern corner of the island, near Tinian Town, the major "city" on the island. A much smaller beach lies directly across Tinian from the southwestern beaches, on the southeastern side of the island. On the far northwestern corner of Tinian are two small beaches, one 60 and the other 160 yards wide. After great deliberation and careful clandestine reconnaissance, the Marine and Navy amphibious planners decided to land on the northern beaches, on the assumption that the Japanese would not believe that U.S. forces could support a massive amphibious assault across such narrow beaches. In addition, the northern beaches were very close to southern Saipan, easing movements of supplies and troops between the two islands, and enabling Saipan-based U.S. artillery to support the initial U.S. assault. The decision to attack the northern beaches was a gamble, because determined Japanese opposition, combined with the narrowness of the beaches, could lead to disaster, with the Marines jammed into the beaches and unable to move beyond them under Japanese fire.

To maintain the element of tactical surprise, the Marines and other services were careful to do nothing which would lead the Japanese to believe that the attack would come across the northern beaches. Artillery and air support, air and ground reconnaissance were detected at all areas of Tinian, not just the northern beaches. The U.S. decision was fully justified by events. The Japanese commander of the 8,900 Japanese troops on Tinian expected the Americans to come across the southwestern beaches, possibly the southeastern ones, and had constructed fortifications and disposed his troops accordingly.

U.S. artillery began firing on Tinian only five days after the initial landings on Saipan, on June 20. On July 12, it was agreed that D–Day for Tinian would be July 24. On July 23, heavy U.S. artillery bombardments and air strikes against targets all over the island began, and the assault components of the 4th Marine Division boarded landing craft for the short journey of a few miles from Saipan to Tinian.

D–Day at Tinian, July 24, was an immense contrast to the bloody D–Day on Saipan over five weeks earlier. Two regiments of the 4th Marine Division landed on the northern beaches and rapidly pushed inland against light resistance. Marine casualties totalled 15 dead and 225 wounded, less than a tenth of D–Day losses on Saipan. On the night of July 24–25, a hastily-mounted Japanese counterattack was utterly smashed; over 1,200 counted Japanese dead in front of the 4th Marine Division's positions constituting fully one-seventh of the entire Japanese force on the island. The American decision to land on the narrow northern beaches had been fully vindicated.

On July 25–26, the 2nd Marine Division was landed and joined the 4th Marine Division in a steady drive south. While Japanese resistance was fierce in some places and at some times, from the perspective of higher commanders the battle went much more smoothly than the conquest of Saipan. By July 31, remaining Japanese organized resistance had been compressed into a small, thin strip of land against the southeastern coast of Tinian. After two more days of combat, marked by occasional last-ditch banzai charges, but mercifully not by the mass suicide of Japanese civilians seen on Saipan, Tinian was declared secure on August 1, 1944.

"A statement like that, however, was a sort of partial truth on any Pacific territory captured from the Japanese. On Tinian, even more than elsewhere, the residue of the enemy force was troublesome. Some of the Japanese soldiers preferred self-destruction to surrender, but the proportion of soldiers and civilians that committed suicide was smaller than on Saipan. The Japanese soldier that chose to live was a die-hard type, able to hide out for months."[6] Thus, one regiment of the 2nd Marine Division that remained on the island to flush out Japanese stragglers lost about 40 killed and 125 wounded between August 1, 1944 and January 1, 1945, killing 500 Japanese after the official "securing" of the island.

Total U.S. casualties on Tinian totalled approximately 300 KIA and 1,600 WIA; although figures vary depending on the sources consulted, it appears that all of the 8,900 Japanese on the island were eventually killed except for slightly over 300 prisoners taken. The least costly of the three Marianas islands battles, Tinian arguably resulted in the greatest dividends for the further prosecution of the war, due to its suitability for airfield construction to support the strategic air offensive against Japan.

GUAM

It has originally been planned that U.S. forces would assault Guam on June 18, 1944, only three days after the initial landings on Saipan. However, several developments required the postponement of the Guam operation for over a month. First, by June 15 the prospects of an approaching naval battle with the Japanese—what became the American victory in the Battle of the Philippine Sea during June 19–20—forced U.S. naval commanders to redeploy their ships away from the Marianas to meet the approaching Japanese fleet. The Japanese naval threat had to be neutralized before the U.S. Navy could cover and support a major amphibious landing on Guam. Second, the ferocity of Japanese resistance on Saipan required the commitment of the entire 27th Infantry Division, in reserve for the entire Marianas operation. Another Army unit—the 77th Infantry Division, in Hawaii—would have to be committed to Guam. Finally, it was not clear until early July that the 77th Division, or parts of it, would not be needed on Saipan as well. All of these factors led to the postponement of the invasion of Guam until July 21, 1944.

In preparing for the liberation of Guam, American planners had to take several factors into account which did not apply to Saipan and Tinian. "Guam is the largest island north of the equator between Hawaii and the Philippines. With an area of 225 square miles, it is three times the size of Saipan and measures 30 miles long by 4 to 8½ miles wide."[7] Its size posed both problems and opportunities for maneuver, delay, and logistical support not found on the smaller islands.

As a U.S. possession, Guam was going to be liberated, not conquered by U.S. forces. There were about 24,000 native Guamanians on the island in 1944, and the U.S. command had to be prepared to provide for the restoration of services and adequate living standards to people who had remained almost uniformly loyal throughout almost three years of Japanese occupation:[8]

"Slightly over a hundred were of mixed American and Chamorro [native Guamanian] parentage and had been jailed as soon as the Japanese occupied the island. The rest of the population suffered some organized maltreatment and abuse in the early days of Japanese rule, but this appeared to have gradually tapered off. However, rigid food rationing, forced labor, confiscation of property without compensation, exclusion from business enterprises, and a score of lesser deprivations and humiliations kept the native population sullen and restive during the period of Japanese occupation. In June 1943 all able-bodied men between the ages of fourteen and sixty were forced to work for the occupation army, and women were ordered to replace the men in the fields. After the American air raid of 11 June [1944], large numbers of natives fled to the hills. Many were rounded up by Japanese military police and placed in camps * * * The Guamanians were clearly poor raw material for collaborationism, and there is no evidence that the Japanese made any successful attempt to reconstruct them to that end."

As was the case with Saipan and Tinian, the Japanese did not begin preparing to defend Guam against American assault until February-March 1944, after the fall of the Marshall Islands. Japanese defensive preparations were not as extensive as those on Saipan—certainly not in proportion to the size of the island. By late July 1944, the Guam garrison totalled about 18,500 Japanese troops, compared to the 30,000 that had been on Saipan. Unfortunately for the Marines making the assault landings on Guam, however, the terrain of the island—the locations of suitable beaches, harbors, and airfields—limited American options. Furthermore, having invaded the island themselves in December 1941, the Japanese had studied Guam from the point of view of likely objectives for an amphibious assault. When the Marines came ashore, therefore, they would do so into the heart of Japanese defensive positions fortifications, and troops on Guam.

All of the beaches to be attacked were on the western side of Guam. Those beaches

[4] Gen. Holland M. Smith, USMC (Ret.), and Percy Finch. *Coral and Brass*. New York, Charles Scribner's Sons, 1949: 181.

[5] Shaw, Nalty, and Turnbladh, Central Pacific Drive: 358.

[6] Ibid.: 421.

[7] Ibid.: 439.

[8] Philip A. Crowl. Campaign in the Marianas. The War in the Pacific. United States Army in World War II. Washington, Office of the Chief of Military History, Department of the Army, 1960: 332.

north of the Orote Peninsula, which jutted out into the ocean in a western direction from the center of western Guam, would be the objectives of the 3rd Marine Division. The 1st Provisional Marine Brigade, composed of two Marine infantry regiments and supporting arms and services, and therefore consisting of the equivalent of ⅔ of a division (a Marine division having three infantry regiments at full strength), would attack the beaches south of the peninsula.

The D-Day air and naval bombardment of the Guam beaches was both heavier and more precise than that directed against the Saipan beaches, due to the disappointing results of the Saipan bombardment and the heavy losses the Marines sustained on Saipan D-Day. However, the Japanese on both the northern beaches (being attacked by the 3rd Marine Division) and the southern beaches (the 1st Marine Brigade) still had plenty of fight left in them when the first amphibious assault vehicles headed for the shore the morning of July 21, 1944.

Resistance was heaviest on the left flank and the center of the 3rd Marine Division's attack zone. Here the Marines had to attack up steep cliffs that rose just behind the beaches—cliffs that included many caves which proved impervious to the preassault air and naval bombardment. Nonetheless, by the end of D-Day the 3rd Marine Division was ashore all along the line at the cost of about 160 Marines KIA and MIA and 540 WIA. Supplies and supporting artillery were ashore, and the troops of the 3rd Marine Division began bracing themselves for the usual Japanese counterattack.

Resistance was less intense, but still substantial, on the southern beaches. Although the 1st Marine Brigade was not facing the cliffs and caves of the 3rd Marine Division, numerous Japanese defenders made its task a difficult one. Japanese artillery and mortars inflicted many casualties on the beaches, and the artillery fire continued as brigade troops moved inland. However, by early evening the two Marine regiments of the brigade were ashore at the cost of about 350 Marine casualties, and one of the three regiments of the Army's 77th Infantry Division, as well as both Marine and Army artillery, was ashore by the early morning of July 22.

Surprisingly, it was the southern beachhead that was hit by a full-scale Japanese counterattack on the night of July 21-22, not the more vulnerable positions of the 3rd Marine Division in the north. By dawn of July 22, the 1st Marine Brigade had killed over 600 Japanese at the cost of about 50 dead and 100 wounded of its own, and virtually annihilated an attacking Japanese regiment.

Between July 22 and July 24 the 1st Marine Brigade turned north, reinforced eventually by the entire 77th Infantry Division, and sealed off the Orote Peninsula, which separated the northern and southern beachheads. At the same time, the 3rd Marine Division gained very little ground due to extremely rough terrain and fierce Japanese resistance. By the close of July 24, the first four days of battle on Guam had cost the Marine brigade 220 KIA and MIA and 700 WIA. The 3rd Marine Division had lost over 400 KIA and MIA and almost 1,300 WIA.

By the evening of July 25, the 3rd Marine Division was in bad shape. It had sustained almost two thousand battle casualties since landing on Guam; "the division lines had been stretched more than 9,000 yards. The regiments and battalions had almost no reserves to call on, and even [the] division had only one depleted battalion in reserve. Should the enemy choose this time and place for an organized counterattack, the situation for the Marines could hardly have been worse. Unfortunately, the Japanese did so choose."[9]

During the night of July 25-26, the equivalent of two-thirds of a Japanese division struck the lines of the 3rd Marine Division in a characteristic banzai charge. At the same time, a smaller Japanese counterattack was launched from the Orote Peninsula against the 1st Marine Brigade. Although the fighting was heavy, and seesawed back and forth in the 3rd Marine Division sector, by the morning of July 26 the Japanese attackers had been virtually annihilated. An estimated 3,500 Japanese were killed on Guam during the few hours of the counterattack. This Japanese failure "broke the back" of Japanese resistance on Guam, as the Japanese commander acknowledged in radio messages to Tokyo.

The rest of the battle for Guam consisted of two main actions. Between July 25 and July 30 the 1st Marine Brigade captured the Orote Peninsula from stubborn Japanese defenders who, cut off from their fellows on the rest of the island, nonetheless went down fighting, losing over 1,600 dead (compared to 150 Marine KIA and MIA and 720 WIA) in the process. Simultaneously, the 3rd Marine Division and the Army's 77th Infantry Division, committed as a full division for the first time, swung to their left and drove toward the northern end of Guam. Once 77th Division reconnaissance patrols had determined that there were no substantial Japanese forces in southern Guam, both American divisions attacked northwards. By August 10, 1944, the island had been secured, although stragglers continued to surrender—or be killed—until the end of the war, and some did not come out of the jungles until the 1960s and 1970s. U.S. casualties on Guam totalled 1,900 KIA/MIA and 7,100 wounded; although precise figures vary, it appears that with the exception of about 500 prisoners, the entire Japanese garrison of 18,500 was killed or died.

CONCLUDING OBSERVATIONS

The successful capture of Saipan and Tinian, and the liberation of Guam, represented the maturation of U.S. amphibious warfare doctrine and techniques. These operations marked the culmination of decades of careful thinking by U.S. Marine planners about how to wrest heavily-defended island targets from a determined Japanese foe. By the time Guam was secured, there was confidence that any Japanese-held island—including any of the Japanese home islands—could be attacked and taken by American forces, albeit frequently at very high cost in American casualties.

The seizure of the Marianas, therefore, did more than (1) breaching another set of Japanese defenses that stood between U.S. forces and the Japanese home islands and (2) providing air bases from which U.S. land-based bombers could strike at Japan proper. The Marianas operations ended with the U.S. Armed Forces confident about ultimate victory—confidence they would need for the even more costly, and more ferocious Central Pacific island battles yet to come—Peleliu in September-December 1944, Iwo Jima in February-March 1945, and Okinawa in April-June 1945. That confidence would have been put to the greatest test of all had the United States been required to invade and capture the southern Japanese home island of Kyushu on November 1, 1945, as planned in the summer of 1945, or even occupy the central home island of Honshu, with an invasion tentatively planned for March 1, 1946.

Most believe that what made the invasion of Japan proper unnecessary was, in large part, the strategic air offensive against Japan staged from the Marianas. Massive airfield development on all the islands, but especially Tinian, provided the bases from which U.S. Army Air Forces B-29 bombers mounted huge air raids against Japanese cities and economic infrastructure, beginning in late 1944 but accelerating in February-March 1945. The catastrophic effects of this conventional bombing campaign, combined with the atomic bombings of Hiroshima and Nagasaki in August 1945 (also staged from Tinian), ultimately tipped the scales within the Japanese government in favor of surrender in mid-August.

MAJOR WORKS CONSULTED

Philip A. Crowl. Campaign in the Marianas. The War in the Pacific. United States Army in World War II. Washington, Office of the Chief of Military History, Department of the Army, 1960. 505 p.

Leckie, Robert, Strong Men Armed: The United States Marines against Japan. New York, Ballantine Books Edition, 1962: 313-87.

Henry I. Shaw, Jr., Bernard C. Nalty, and Edwin T. Turnbladh. Central Pacific Drive. History of U.S. Marine Corps Operations in World War II. Volume III. Washington, Historical Branch, G-3 Division, Headquarters, U.S. Marine Corps, 1966. 685 p.

T. Dodson Stamps and Vincent J. Esposito (Editors). A Military History of World War II, With Atlas. Volume II: Operations in the Pacific and Mediterranean Theaters. West Point, New York, United States Military Academy, 1953: 384-88.●

[9] Ibid: 363-64.

By Mr. CRANSTON (for himself, Mr. SPECTER, Mr. DECONCINI, Mr. ROCKEFELLER, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. SIMPSON, Mr. THURMOND, Mr. MURKOWSKI, and Mr. JEFFORDS):

S. 2322. A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

VETERANS' SURVIVORS' COMPENSATION IMPROVEMENT ACT OF 1992

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am introducing today S. 2322, the proposed Veterans Compensation Cost-of-Living Adjustment Act of 1992. I am joined in doing so by a bipartisan group of Veterans' Affairs Committee members—Senators SPECTER, DECONCINI, ROCKEFELLER, GRAHAM, AKAKA, DASCHLE, SIMPSON, THURMOND, MURKOWSKI, and JEFFORDS.

SUMMARY

Mr. President, this bill would increase, effective December 1, 1992, the rates of compensation paid to veterans with service-connected disabilities and of dependency and indemnity compensation [DIC] paid to the survivors of certain service-disabled veterans. The rates would increase by the same percentage as the increase in Social Security and VA pension benefits. The compensation COLA would become effec-

tive on the same date that the increase for those benefits takes effect.

Mr. President, we have a fundamental obligation to address the needs of the 2.2 million service-disabled veterans and 340,000 survivors who depend on these compensation programs. The needs of these veterans and survivors are uniquely related to veterans' affairs. In my 23 years in the Senate, I consistently have led the effort to provide COLA's in compensation and DIC benefits in order to ensure that the value of these top-priority service-connected VA benefits is not eroded by inflation. Most recently, Congress enacted Public Law 102-152 on October 30, 1992, providing a 3.7-percent increase in these same benefits, effective December 1, 1991.

The Congressional Budget Office currently estimates that the December 1, 1992, Social Security and VA pension COLA will be 3.2 percent. This is a preliminary estimate, though, and I expect the actual increase will be different than this estimate. The President's budget estimated in January that the increase would be 3 percent. The Congressional Budget Office estimates that a 3.2-percent COLA would cost $339 million in budget authority and $305 million in outlays over current law.

INDEXING

Mr. President, I am pleased to note that this year the administration has not proposed legislation that Reagan and Bush administrations previously advocated that would index the veterans' compensation COLA. Last year, the Senate voted 71 to 24 against an amendment to the fiscal year 1992 veterans' COLA bill, S. 775, that would have indexed the COLA. That vote represented an overwhelming rejection of the proposal to eliminate the Congress' control over the veterans' compensation COLA. I am hopeful that this issue finally has been laid to rest.

NORMAL ROUNDING OF RATES

Mr. President, the bill that I am introducing today does not include, as did S. 775 last year, a provision to require that—for the purposes of the sequestration baseline under section 257(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by section 13101(e) of the Budget Enforcement Act of 1990—the COLA for each rate of compensation be assumed to be rounded to the nearest whole dollar. The OMB cost estimate for the COLA bill Congress enacted last fall and the administration's fiscal year 1993 budget conform that OMB has changed its rule and now follows the correct rounding rule as clarified in S. 775. The provision thus no longer is necessary.

As my colleagues know, the Budget Enforcement Act gave the Office of Management and Budget responsibility for determining the sequestration baseline for the new pay-as-you-go budget rules. The new rules require sequestration of certain direct spending funds by the amount equal to net spending—new direct spending minus any offsetting new receipts or spending reductions—in excess of the direct spending that otherwise would have occurred under current law and certain established practices.

Last year, the committee learned in VA's testimony for our June 12, 1991, hearing on S. 775, that OBM's fiscal year 1992 baseline assumed that all veterans' compensation rate increases would be rounded down to the next lower whole dollar. This could have had the effect of attributing direct-spending costs, which could have triggered a sequestration, to COLA legislation that provided for normal rounding of compensation rates. However, the Social Security and VA-pension COLA's, on which the increases in the rates of compensation are based, actually were just 3.7 percent—lower than the 5.2-percent estimate in the OMB baseline. This totally fortuitous circumstance enabled the Congress to enact a full, normally rounded COLA that avoided the threat of a sequester.

OMB's fiscal year 1992 baseline could have forced the Congress to make significant cuts in other programs in order to provide a full, normally rounded compensation COLA to service-disabled veterans and their survivors. Had the OMB baseline accurately predicted the 3.7-percent COLA for fiscal year 1992, enactment of a normally rounded 3.7-percent COLA would have been scored by OMB as exceeding the pay-as-you-go rule by $21 million in fiscal year 1992 and almost $25 million for each year thereafter under OMB's rule. Each year's difference would be additive, so that, at that rate, the OMB rule could have forced cuts of over $230 million during fiscal years 1992-95.

Mr. President, I am pleased that the Senate did not sit by idly while OMB unilaterally imposed a rule that treated those who were disabled as a result of service to their country worse than recipients of Social Security and other Federal benefits periodically adjusted by law. Senate passage, without dissent, of the provision in S. 775 to require scorekeeping based on normal rounding sent OMB a clear message that its rule was unacceptable.

Thus, I am very pleased to note that Secretary Derwinski has confirmed that the fiscal year 1993 budget submission includes a proposed compensation COLA that assumes normal rounding. I believe that the attention that our committee and the Senate focused on this issue last year was at least partially responsible for OMB's apparent change of heart on the COLA rounding rule.

CONCLUSION

Mr. President, I am proud that Congress has provided annual increases in VA compensation rates every fiscal year since 1976, and I urge all of my colleagues to continue to support these regular increases.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2322

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1992, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2)(A) The Secretary shall increase each of the rates and limitations in sections 1114, 1115(1), 1162, 1311, 1311, and 1314 of title 38, United States Code, that were increased by the amendments made by the Veterans' Compensation Amendments of 1991 (Public Law 102-3; 105 Stat. 7). The increase shall be made in such rates and limitations as in effect on November 30, 1992, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1992, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (2 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415 (i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1992, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2)(A) as increased under this section.

By Mr. CRANSTON (for himself and Mr. DECONCINI):

S. 2323. A bill to amend title 38, United States Code, to revise the rates of dependency and indemnity compensation payable to surviving spouses of certain service-disabled veterans, to provide supplemental service disabled veterans' insurance for totally disabled veterans, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS' SURVIVORS' BENEFITS IMPROVEMENT ACT OF 1992

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am introducing S. 2323, the proposed Veterans' Survivors' Benefits Improvement Act of 1992. I am

joined in doing so by the ranking Democratic member of our committee, Senator DECONCINI.

Mr. President, this legislation would make major changes in VA's system of dependency and indemnity compensation paid to survivors of veterans who die from service-connected conditions. Most agree that the current system, which provides DIC payments based on the pay grade, or rank, of the deceased veteran, is unfair and in need of major revisions. Our bill would establish a base rate of DIC, with additional amounts based on the length of the deceased veteran's service and the average amount of compensation the veteran received during the 5 years preceding the veteran's death. The bill also would increase the amount of service disabled life insurance available to totally disabled veterans and contains provisions that offset the costs of the bill, so that the bill has no net cost under the pay-as-you-go budget rules.

I have been working on this legislation for more than a year, with the cooperation and assistance of many interested veterans' organizations, benefits experts, and others. I recently circulated a discussion draft of the bill to many interested organizations and individuals, and we will continue to seek constructive input on this important legislation. Further modifications are under consideration. I have scheduled a hearing for March 20 on this bill and on the fiscal year 1993 veterans' compensation COLA, which I also am introducing today.

Mr. President, I urge all of my colleagues to join in supporting this legislation.

Mr. President, I ask unanimous consent that a summary of the bill and the text of the bill be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE DIC REFORM BILL

This discussion draft would reform the Department of Veterans Affairs Dependency and Indemnity Compensation (DID) program as follows:

1. Provide eligible surviving spouses with a basic DIC rate of $650 a month, plus additional amounts, as described below, in recognition of the length and severity of the veteran's disability and the length of the veteran's service.

2. Provide additional monthly DIC equal to 10 percent of the average monthly disability compensation that the veteran received during the five years preceding his or her death. The average monthly compensation would equal the total compensation the veteran received or was entitled to receive during the five-year period, divided by 60 (5 yrs x 12 months/yr). The calculation of average monthly compensation would not include any additional compensation the veteran received for aid and attendance under section 1114(r) of title 38, United States Code; for dependent children under section 1115; or for a clothing allowance under section 1162. The Secretary would have to prescribe regulations to adjust the calculation for inflation to ensure it is based on the current value of the compensation benefits that were paid to the veteran during the five-year period.

3. Provide additional monthly DIC based on the length of the deceased veteran's military service. For 20 or more years of service, the surviving spouse would receive an additional $60 a month; for at least 10 years, but less than 20 years, the amount would be $40 a month; for at least five years, but less than 10 years, the amount would be $20 a month; and for less than five years, no additional amount would be paid.

4. Provide a special transitional rate of DIC for the first full month following the month of the veteran's death. The amount payable for the month after the veteran's death would be either 50 percent of the disability compensation paid to the deceased veteran for the last full month before the veteran's death, or the amount of DIC calculated under the new DIC provisions, whichever is greater.

5. Provide payment of a full month's disability compensation for the month during which the veteran died. (Current law terminates disability compensation at the beginning of the month during which the veteran died.)

6. Increase the additional amount payable under section 1311(b) of title 38 to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 during FY 1993, $150 during FY 1994, and $200 thereafter.

7. Apply the new provisions to DIC paid to eligible surviving spouses of veterans who died on or after October 1, 1992. Surviving spouses of veterans who died before that date would receive either their current DIC payment or the amount calculated under the proposed reform provisions, whichever is greater.

8. Provide eligibility for up to $15,000 in additional Service Disabled Veterans' Insurance (SDVI) for totally disabled veterans who qualify under section 1912 of title 38 for a waiver of premiums. The veteran must apply for the additional coverage within the one-year period beginning on the month after the bill is enacted or within one year after VA notified or notifies the veteran that he or she is eligible for a waiver of premiums. The veteran would have to pay the regular premium for the additional amount of SDVI.

The draft legislation also contains provisions to offset the costs of the DIC and insurance provisions, as required by the "pay-as-you-go" rule in the Budget Enforcement Act of 1990 (title XIII of Public Law 101-508). These provisions would:

1. Make permanent section 8003 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), which limits pension payments to $90 a month for Medicaid-eligible veterans receiving VA needs-based pension who have no dependents and who are in nursing homes participating in Medicaid.

2. Expand section 8003 of OBRA to cover similarly situated veterans' survivors who are receiving VA pension. This provision is substantively identical to section 4 of S. 775, which the Senate passed on November 20, 1991.

3. Extend by one year, to September 30, 1993, authority provided under section 8051 of OBRA that allows VA to obtain data from the Social Security Administration and the Internal Revenue Service to verify that those who apply for or receive VA needs-based pension do not exceed income limitations.

S. 2323

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Survivors' Benefits Improvement Act of 1992".

(b) REFERENCES TO TITLE 38.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. REVISION OF RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF VETERANS.

(a) DEATHS OF VETERANS BEFORE OCTOBER 1, 1992.—Subsection (a) of section 1311 is amended—

(1) by inserting "(1)" before "Dependency"; and

(2) by inserting at the end the following new paragraphs:

"(2) Subject to subsections (b) through (d) and except as provided in paragraph (3), dependency and indemnity compensation shall be paid to surviving spouses of veterans whose deaths occur before October 1, 1992, at the rates provided in paragraph (1).

"(3) Each surviving spouse referred to in paragraph (2) for whom the rate of dependency and indemnity compensation payable under subsection (e)(2) exceeds the rate of such compensation payable under paragraph (1) shall be paid dependency and indemnity compensation at the rates specified in subsection (e)(2).".

(b) DEATHS ON OR AFTER OCTOBER 1, 1992.—Section 1311 is amended by adding at the end the following new subsections:

"(e)(1) Subject to subsections (b) through (d), the rates of dependency and indemnity compensation payable for deaths occurring on or after Octber 1, 1992, shall be determined under this subsection.

"(2) The amount of dependency and indemnity compensation payable to the surviving spouse of a deceased veteran under this paragraph shall be the sum of—

"(A) $650;

"(B) an amount that is equal to 10 percent of the average monthly compensation paid to the veteran during the five years before the veteran's death; and

"(C) an amount equal to the following:

"(i) In the case of a veteran who completed a period of active military, naval, or air service of twenty years or more, $60.

"(ii) In the case of a veteran who completed a period of such service of ten years or more but less than twenty years, $40.

"(iii) In the case of a veteran who completed a period of such service of five years or more but less than ten years, $20.

"(3)(A) For the purposes of paragraph (2), the term 'average monthly compensation' means the amount that is determined by dividing by 60 the total amount of compensation, if any, which a deceased veteran received or was entitled to receive under chapter 11 of this title (other than under sections 1114(4), 1115, and 1162) during the five-year period preceding the date of the veteran's death.

"(B) In calculating the average monthly compensation of a veteran under subparagraph (A), the Secretary shall adjust for inflation to the later of October 1, 1992, or the date on which a claim for compensation is

filed under this chapter the rate of compensation in each of the five years preceding the date of the veteran's death. The Secretary shall prescribe the manner of adjustments for inflation under this paragraph.

"(f) Dependency and indemnity compensation shall be paid to a surviving spouse for the first full calendar month following the death of a veteran in an amount that is the greater of—

"(1) 50 percent of the amount of compensation under chapter 11 of this title which the veteran received or was entitled to receive for the last full month prior to the date of the veteran's death; and

"(2) the amount payable in the case of such veteran to subsection (e)(2).".

(c) ADDITIONAL DIC FOR CHILDREN.—(1) Section 1311(b) is amended by striking out "$71 for each such child" and inserting in lieu thereof "$100 for each such child during fiscal year 1993, $150 for each such child during fiscal year 1994, and $200 for each such child during each fiscal year thereafter".

(2) The amendment made by paragraph (1) shall take effect on October 1, 1992.

SEC. 3. DATE OF DISCONTINUATION OF COMPENSATION IN THE CASE OF THE DEATH OF A VETERAN.

Section 5112 is amended—

(1) in subsection (b), by striking out "The" in the matter preceding clause (1) and inserting in lieu thereof "Except as provided in subsection (c), the";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

"(c) The effective date of a discontinuance of compensation by reason of the death of a payee shall be the last day of the month in which such death occurs.".

SEC. 4. SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS.

(a) IN GENERAL.—Subchapter I of chapter 19 is amended by inserting after section 1922 the following new section:

"§ 1922A. Supplemental service disabled veterans' insurance for totally disabled veterans

"(a) Any person insured under section 1922(a) of this title who qualifies for a waiver of premiums under section 1912 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $15,000.

"(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the one-year period beginning on the date that the Department notifies the person that the person is entitled to a waiver of premiums under section 1912 of this title.

"(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 1922(a) of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

"(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.".

"(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 1922 the following new item:

"1922A. Supplemental service disabled veterans' insurance for totally disabled veterans.".

SEC. 5. REDUCTION IN PENSION FOR VETERANS AND VETERANS' SURVIVORS WHO ARE RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) REDUCTION IN PENSION.—Paragraph (2) of section 5503(f) is amended to read as follows:

"(2)(A) Not more than $90 per month may be paid under chapter 15 of this title to or for any person described in subparagraph (B) for any period that a nursing facility furnishes such person with services covered by a Medicaid plan. The restriction in the preceding sentence applies to periods after the month of the person's admission to the nursing facility.

"(B) A person referred to in subparagraph (A) is a person—

"(i) who is covered by a Medicaid plan for services furnished such person by a nursing facility; and

"(ii) who is (I) a veteran who has neither spouse nor child, or (II) a surviving spouse who has no child.".

(b) CONFORMING AMENDMENTS.—Section 5503(f) is amended as follows:

(1) In paragraph (3)—

(A) by striking out "a veteran" and inserting in lieu thereof "a person referred to in paragraph (2)(A)"; and

(B) by striking out "such veteran under paragraph (2) of this subsection" and inserting in lieu thereof "such person under such paragraph".

(2) In paragraph (4)—

(A) by striking out "A veteran" and inserting in lieu thereof "A person referred to in paragraph (2)(A)";

(B) by striking out "the veteran" both places it appears and inserting in lieu thereof "the person"; and

(C) by striking out "the veteran's" and inserting in lieu thereof "the person's".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 1992, and apply with respect to months after September 1991.

(d) DELETION OF EXPIRATION DATE.—Section 5503(f) is amended by striking out paragraph (6).

SEC. 6. EXTENSION OF CERTAIN AUTHORITY TO CARRY OUT INCOME VERIFICATION.

(a) TITLE 38.—Section 5317(g) is amended by striking out "September 30, 1992" and inserting in lieu thereof "September 30, 1993".

(b) INTERNAL REVENUE CODE OF 1986.—Section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended in the second sentence of the flush material by striking out "September 30, 1992" and inserting in lieu thereof "September 30, 1993".

ADDITIONAL COSPONSORS

S. 523

At the request of Mr. SIMON, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 523, a bill to authorize the establishment of the National African-American Memorial Museum within the Smithsonian Institution.

S. 765

At the request of Mr. BREAUX, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer social security taxes on cash tips.

S. 799

At the request of Mr. NICKLES, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 799, a bill to amend the Davis-Bacon and the Service Contract Act of 1965 to exempt from such Acts tenants of federally related housing who participate in the construction, alteration, or repair of their residences, and for other purposes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 866

At the request of Mr. BREAUX, the names of the Senator from Idaho [Mr. SYMMS] and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 866, a bill to amend the Internal Revenue Code of 1986 to clarify that certain activities of a charitable organization in operating an amateur athletic event do not constitute unrelated trade or business activities.

S. 1028

At the request of Ms. MIKULSKI, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1028, a bill to authorize increased funding for international population assistance and to provide for a United States contribution to the United Nations Population Fund.

S. 1102

At the request of Mr. MOYNIHAN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1102, a bill to amend title XVIII of the Social Security Act to provide coverage of qualified mental health professionals services furnished in community mental health centers.

S. 1128

At the request of Mr. GLENN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 1128, a bill to impose sanctions against foreign persons and United States persons that assist foreign countries in acquiring a nuclear explosive device or unsafeguarded special nuclear material, and for other purposes.

S. 1179

At the request of Mr. JOHNSTON, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1179, a bill to stimulate the production of geologic-map information in the United States through the cooperation of Federal, State, and academic participants.

S. 1357

At the request of Mr. BREAUX, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Virginia [Mr. WARNER], and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the

treatment of certain qualified small issue bonds.

S. 1379

At the request of Mr. NICKLES, his name was added as a cosponsor of S. 1379, a bill to prohibit the payment of Federal benefits to illegal aliens.

At the request of Mr. EXON, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1379, supra.

S. 1565

At the request of Mr. GRAHAM, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1565, a bill to amend the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in connection with route transfers.

S. 1572

At the request of Mr. BREAUX, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1572, a bill to amend title XVIII of the Social Security Act to eliminate the requirement that extended care services be provided not later than 30 days after a period of hospitalization of not fewer than 3 consecutive days in order to be covered under part A of the Medicare Program, and to expand home health services under such program.

S. 1658

At the request of Mr. NICKLES, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1658, a bill to require the Secretary of Labor, with respect to contracts covering federally financed and assisted construction, and labor standards provisions applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act, to ensure that helpers are treated equitably, and for other purposes.

S. 1698

At the request of Mr. SARBANES, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 1698, a bill to establish a National Fallen Firefighters Foundation.

S. 1786

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1842

At the request of Mr. DASCHLE, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1842, a bill to amend title XIX of the Social Security Act to provide for Medicaid coverage of all certified nurse practitioners and clinical nurse specialists services.

S. 1860

At the request of Mr. GRASSLEY, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 1860, a bill to amend part A of title IV of the Social Security Act to remove barriers and disincentives in the program of aid to families with dependent children so as to enable recipients of such aid to move toward self-sufficiency through microenterprises.

S. 1866

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1866, a bill to promote community based economic development and to provide assistance for community development corporations, and for other purposes.

S. 1962

At the request of Mr. ADAMS, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1962, a bill to amend the Civil Rights Act of 1991 to apply the Act to certain workers, and for other purposes.

S. 1965

At the request of Mr. GORTON, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 1965, a bill to amend the Clean Water Act to provide global environmental protection incentives and enhanced competitiveness of domestic business.

S. 1970

At the request of Mr. DURENBERGER, the names of the Senator from New Jersey [Mr. BRADLEY] and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 1970, a bill to expedite the naturalization of aliens who served with special guerilla units in Laos.

S. 1998

At the request of Mr. EXON, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 1998, a bill to adopt the Airline Consumer Protection and Competition Emergency Commission Act of 1991.

S. 2009

At the request of Mr. PACKWOOD, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2009, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 2103

At the request of Mr. GRASSLEY, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 2103, a bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for nurse practitioners, clinical nurse specialists, and certified nurse midwives, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 2104

At the request of Mr. GRASSLEY, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 2104, a bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physical assistance, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 2151

At the request of Mr. GRAHAM, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 2151, a bill to amend the Internal Revenue Code of 1986 to allow a credit for the purchase of a principal residence by a first-time home buyer.

S. 2169

At the request of Mr. LAUTENBERG, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 2169, a bill making supplemental appropriations for programs in the fiscal year that ends September 30, 1992, that will provide near-term improvements in the Nation's transportation infrastructure and long-term benefits to those systems and to the productivity of the United States economy.

S. 2205

At the request of Mr. LEAHY, the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 2205, a bill to amend the Public Health Service Act to provide for the establishment or support by States of registeries regarding cancer, to provide for a study regarding the elevated rate of mortality for breast cancer in certain States, and for other purposes.

S. 2236

At the request of Mr. SIMON, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Maine [Mr. MITCHELL], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 2236, a bill to amend the Voting Rights Act of 1965 to modify and extend the bilingual voting provisions of the act.

S. 2244

At the request of Mr. THURMOND, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2244, a bill to require the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate United States participation in that conflict.

S. 2278

At the request of Mr. SHELBY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2278, a bill to amend section 801 of the act entitled "An Act to establish a code of law for the District of Columbia," approved March 3, 1901, to require life imprisonment without parole, or death penalty, for first degree murder.

S. 2290

At the request of Mr. WIRTH, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of S. 2290, a bill to require public disclosure of examination reports of certain failed depository institutions.

S. 2305

At the request of Mr. THURMOND, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2305, a bill to control and prevent crime.

S. 2317

At the request of Mr. LOTT, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2317, a bill to amend the Congressional Budget and Impoundment Control of 1974 to reform the budget process, and for other purposes.

SENATE JOINT RESOLUTION 166

At the request of Mr. DOLE, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 230

At the request of Mr. REID, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Indiana [Mr. LUGAR], the Senator from Oregon [Mr. PACKWOOD], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Joint Resolution 230, a joint resolution providing for the issuance of a stamp to commemorate the Women's Army Corps.

SENATE JOINT RESOLUTION 231

At the request of Mr. THURMOND, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Vermont [Mr. LEAHY], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 231, a joint resolution to designate the month of May 1992, as "National Foster Care Month."

SENATE JOINT RESOLUTION 248

At the request of Mr. CONRAD, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 248, a joint resolution designating August 7, 1992, as "Battle of Guadalcanal Remembrance Day."

SENATE JOINT RESOLUTION 250

At the request of Mr. GRAHAM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 250, a joint resolution to designate February 1992 as "National Grapefruit Month."

SENATE JOINT RESOLUTION 257

At the request of Mr. LAUTENBERG, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Joint Resolution 257, a joint resolution to designate the month of June 1992, as "National Scleroderma Awareness Month."

SENATE JOINT RESOLUTION 263

At the request of Mr. SARBANES, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of Senate Joint Resolution 263, a joint resolution to designate May 4, 1992, through May 10, 1992, as "Public Service Recognition Week."

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE CONCURRENT RESOLUTION 80

At the request of Mr. SIMON, the names of the Senator from Illinois [Mr. DIXON], the Senator from Washington [Mr. ADAMS], the Senator from Rhode Island [Mr. PELL], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Maine [Mr. MITCHELL], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Concurrent Resolution 80, a concurrent resolution concerning democratic changes in Zaire.

SENATE CONCURRENT RESOLUTION 89

At the request of Mr. KERRY, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Concurrent Resolution 89, a concurrent resolution to express the sense of the Congress concerning the United Nations Conference on Environment and Development.

SENATE RESOLUTION 246

At the request of Mr. DOLE, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Resolution 246, a resolution on the recognition of Croatia and Slovenia.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

SENATE RESOLUTION 258

At the request of Mr. SIMON, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Virginia [Mr. ROBB], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of Senate Resolution 258, a resolution expressing the sense of the Senate regarding needed action to address the continuing state of war and chaos and the emergency humanitarian situation in Somalia.

SENATE RESOLUTION 264—RELATING TO PLANTING TREES IN AMERICAN COMMUNITIES

Mr. SIMON (for himself, Mr. AKAKA, Mr. BUMPERS, Mr. D'AMATO, Mr. DASCHLE, Mr. GRASSLEY, Mr. SANFORD, Mr. SHELBY, and Mr. WOFFORD) submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 264

Whereas trees use carbon dioxide in the atmosphere to produce oxygen, which people need in order to live;

Whereas by acting as both shade and windbreaks, trees can save energy;

Whereas trees and forests filter air pollution, provide wildlife habitat, protect watershed areas, prevent soil erosion, and reduce noise pollution;

Whereas tree planting projects contribute to an enhanced sense of community, better understanding among neighbors, and a greater degree of control over the structure of a neighborhood;

Whereas trees provide recreational benefits;

Whereas trees provide beauty and diversity to both rural and urban settings;

Whereas disease and pollution kill millions of city trees each year; and

Whereas there are presently at least 100 million sites available around homes and in towns and cities in the United States where tree planting would improve energy efficiency: Now, therefore, be it

Resolved, That it is the sense of the Senate that people in the United States should plant more trees in their communities.

SENATE RESOLUTION 265—RELATING TO THE YEAR OF THE TREE

Mr. SIMON (for himself, Mr. AKAKA, Mr. BUMPERS, Mr. D'AMATO, Mr. DASCHLE, Mr. GRASSLEY, Mr. SANFORD, Mr. SHELBY, and Mr. WOFFORD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 265

Whereas planting trees is one of the best and easiest ways to help reduce global warming and other environmental problems;

Whereas trees use carbon dioxide in the atmosphere to produce oxygen, which people need in order to live;

Whereas by acting as both shade and windbreaks, trees can save energy;

Whereas trees and forests filter air pollution, provide wildlife habitat, protect watershed areas, prevent soil erosion, and reduce noise pollution;

Whereas tree planting projects contribute to an enhanced sense of community, better understanding among neighbors, and a greater degree of control over the structure of a neighborhood;

Whereas trees provide recreational benefits;

Whereas trees provide beauty to both rural and urban settings; and

Whereas expanding the numbers of healthy trees and forests and restoring natural ecosytems produce environmental and economic benefits that continue for decades: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United Nations should designate 1993 as the "Year of the Tree" in order to en-

courage the citizens of the world to plant trees.

• Mr. SIMON. Mr. President, it is my pleasure today to introduce, along with my colleagues Senators GRASSLEY, SANFORD, WOFFORD, AKAKA, and DASCHLE, two sense of the Senate resolutions. One is to encourage Americans to plant more trees in their communities. The second is to encourage the United Nations to designate 1993 as the "Year of the Tree," in order to inspire people around the world to plant trees. Our message: Individual action can make a difference.

My family and I have a very special tradition we keep on general election and primary election days. We get together at our home in Makanda, IL, and plant a tree. This event is an opportunity for our family to make a lasting contribution to a better world.

All across the Nation, Americans are learning about environmental problems and solutions that can be achieved through individual action. People at my town meetings tell me they want to find out more about what they can do, as families, classrooms, and individuals, to make a difference. This is very encouraging.

Planting trees is one of the best and easiest ways to have an impact on improving our environment. By using carbon dioxide in the atmosphere to produce oxygen, trees help reduce global warming. Trees help save energy by acting as shade in the summer and windbreaks in the winter. They filter air pollution, provide wildlife habitat, protect watershed areas, prevent soil erosion, and reduce noise.

Many communities and neighborhoods have tree planting projects. These projects contribute to an enhanced sense of community and a better understanding among neighbors. Trees are essential elements of a community. If we are really going to clean up our environment, more and more people have to work at it, both in our country and around the world.

I would also like to point out that the American Forestry Association recommends the following steps when planting a tree.

First, locate a clear, open site for your tree, with generous rooting area and good drainage.

Second, loosen and blend the soil in the entire planting area 6-10 inches deep. In the center, dig a hole at least as wide, but only as deep as the root ball.

Third, remove tree from burlap or container and place on solidly packed soil so that the root collar—where the tree's main stem meets the roots—is slightly above the surrounding grade.

Fourth, backfill hole and lightly pack the soil into place around the tree.

Fifth, spread a 2- to 3-inch layer of mulch in the entire area, keeping a 6- to 8-inch distance from the tree trunk.

Sixth, stake tree so that it can flex in the wind. Attach stake to tree using discarded rubber innertubes. Remove them after 6 months.

Seventh, water thoroughly, but do not flood the hole. Water twice a week during dry periods.

I hope more people, including lawmakers, will take a more active interest in planting trees. I urge my colleagues to support these resolutions.•

SENATE RESOLUTION 266—RELATING TO THE ARMS CARGO OF THE NORTH KOREAN MERCHANT SHIP "DAE HUNG HO"

Mr. MCCAIN (for himself, Mr. D'AMATO, Mr. KERRY, Mr. DECONCINI, Mr. DIXON, Mr. SHELBY, Mr. SMITH, Mr. THURMOND, Mr. LEVIN, Mr. WARNER, Mr. SIMON, Mr. GLENN, Mr. GRAHAM, Mr. BRYAN, Mr. HATCH, Mr. KOHL, Mr. HELMS, Mr. BOND, Mr. AKAKA, and Mr. GRASSLEY) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 266

Whereas Israel is the leading democracy in the Middle East, is America's closest strategic ally in the region, and is a principal participant in the Middle East Peace Conference;

Whereas Israel's security is a major concern to the Senate as it seeks to influence the debate on United States foreign policy in the Middle East;

Whereas in the post-Cold War era, the central element in United States relations with other countries must be an effort to stem the sale of advanced weapons technology to aggressor nations;

Whereas without secure borders for Israel, peace in the Middle East is impossible, and Israel's borders are not secure in an era of weapons proliferation;

Whereas Syria is on the Secretary of State's list of countries that sponsor terrorism;

Whereas the regime of Hafez Al Assad is undemocratic and brutal and has continued to support elements of the Palestinian community most opposed to Secretary Baker's current peace initiative;

Whereas Syria ordered $5.6 billion of new arms between 1987 and 1990 and received delivery of $14.5 billion during the same period;

Whereas Syria has purchased North Korean missiles, components, and arms-related technology since the end of the Persian Gulf War; and

Whereas the North Korean merchant ship Dae Hung Ho is about to deliver $100,000,000 worth of SCUD-C missiles and missile-related technology to Syria: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the President, the member countries of the Missile Technology Control Regime (MTCR), the participants of the Middle East Peace Conference, and the international community in general should use the international sanction of condemnation to prevent the delivery of SCUD missiles and missile-related technology to Syria by the North Korean merchant ship Dae Hung Ho; and

(2) out of respect for Israel's security, Syria should demonstrate its desire for peace and acceptance of Israel's right to exist by terminating its agreement with North Korea for delivery of the cargo of Dae Hung Ho.

SEC. 2. For purposes of this resolution, the term "Missile Technology Control Regime" or "MTCR" means the policy statement among the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers.

SEC. 3. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. MCCAIN. Mr. President, I rise today to focus the Senate's attention on the voyage of the *Dae Hung Ho*, a North Korean merchant ship carrying arms to the Middle East.

The resolution that I have submitted for referral resolves:

That it is the sense of the Senate that—

(1) the President, the member countries of the Missile Technology Control Regime (MTCR), the participants of the Middle East Peace Conference, and the international community in general should use the international sanction of condemnation to prevent the delivery of SCUD missiles and missile-related technology to Syria by the North Korean merchant ship Dae Hung Ho; and

(2) out of respect for Israel's security, Syria should demonstrate its desire for peace and acceptance of Israel's right to exist by terminating its agreement with North Korea for delivery of the cargo of Dae Hung Ho.

In early February, the *Dae Hung Ho* left North Korea for Syria carrying $100 million worth of Scud C missiles and related equipment. The new Scud C missiles, which have a range of 360 miles, supplement a similar shipment last year of 20 Scud C's, and like the earlier shipment, will enhance Syria's ability to strike anywhere in Israel from a position deep inside its own borders.

A great deal has been said since the start of Secretary Baker's Middle East peace initiative on October 30 about confidence building measures. It has frequently been alleged by the press and others that the Israelis have been reluctant to reassure their neighbors of their peaceful intentions. On the other hand, the failure of Hafez al-Assad to reassure Israel of his intentions have been virtually ignored.

How do Syrian arms purchases since the end of the gulf war instill confidence in the peace process? How does the voyage of the *Dae Hung Ho* instill confidence in the peace process?

Where is the international outrage as this North Korean ship steams toward the Middle East with its lethal cargo?

In June of 1991, 20 Korean built Scud C missiles were delivered to Syria. In August of 1991, Syria ordered an additional 54 Scud C missiles and a brigade of missile launchers valued between $200 and $400 million. This is where we stood at the start of the Madrid Conference. Now it appears that the North Koreans are following up on their part of the latest destabilizing bargain with Syria.

The people of Israel are very familiar with scud missiles. We all remember scenes of Israelis huddled together in

their basements wearing gas masks. We all remember the images of Israeli school girls with their lunchpails in one hand and their gas masks in the other.

The events of the gulf war revealed a vulnerability that an entire generation of Israelis had never experienced. The destruction caused by Saddam Hussein reminded older generations of days of even greater vulnerability.

By not condemning the delivery of scud missiles to Syria, we are asking the Israelis to live with that vulnerability. At the same time we are asking, that despite their vulnerability, they become involved in the give and take of negotiations with their neighbors.

Our inaction on this matter and the lack of international pressure on Syria defy logic and defy humanity. Our silence on the course of the *Dae Hung Ho* is inconsistent with the demands being placed on the Israelis in connection with the peace conference and shows contempt for the needs of the Israeli people. Peace is impossible in the Middle East without sovereign and secure borders. Sovereign and secure borders are impossible in an era of proliferation.

With this in mind, this resolution, as I mentioned, calls the President of the United States, the signatories of the missile technology control regime, the participants in the Middle East Peace Conference and the international community in general to publicly condemn this delivery of scud C missiles and related technology to Syria.

I am further asking that the United States Senate express its insistence that Syria demonstrate its desire for peace and acceptance of Israel's right to exist by refusing delivery of the missiles. I am simply asking for a confidence-building measure to reinforce the peace process.

I for one am not convinced of Syria's desire for peace. I was not convinced by Farouk Chara's tirade in Madrid. I was not convinced by Syria's invasion of Lebanon and the curious security arrangement by which Syrian dominance is established in Lebanon, but Shi'ite terrorists are still permitted to operate against Israel. I certainly have not been convinced by Hafez Assad's historic rejection of peace with Israel and his support of terrorist organizations vehemently opposed to the current process.

One such terrorist, George Habash, is convalescing at his home in Damascus following his highly publicized and justified expulsion from Paris. This gives me no comfort at all. I am not convinced.

However, I am convinced that proliferation is incompatible with peace in the Middle East and with the security of Israel. I am also convinced that we can confront the problem of proliferation successfully only if we make it the central element of our relations with other nations.

The merchants of death, such as North Korea, must be stopped. The arms sales of North Korea threaten to destabilize the Middle East and threaten to derail the first real opportunity for peace since Camp David. The North Korean authorities are the last of a dying breed. They are contemptuous of the freedom of man and are contemptuous of international stability. In fact, they thrive on oppression and instability and terror.

Their buyers must be stopped as well. Continuing to arm for war against Israel is not a legitimate way for Syria to address its grievances with Israel. The Israeli Government has a right to be alarmed. The Israeli people have a right to be skeptical of the peace process if it masks the intentions of Syria and sweeps massive arms purchases under the rug.

How can we ask anyone in this country and in the international community to take our efforts to stem proliferation and established peace in the Middle East seriously, if we remain silent on the course and cargo of one ship, the *Dae Hung Ho?*

Mr. President, given the urgency of the situation, I am hopeful that we can act on this resolution, and I would ask unanimous consent that the resolution be referred to the appropriate committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources.

The purpose of the oversight hearing is to receive testimony on the status of implementation of the Department of Energy's Civilian Nuclear Waste Program mandated by the Nuclear Waste Policy Act of 1982 and its 1987 amendments.

The hearing will take place on Tuesday, March 31, at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. Attention: Mary Louise Wagner.

For further information, please contact Mary Louise Wagner of the committee staff at (202) 224-7569.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, March 5, beginning at 9:30 a.m., to conduct a hearing on a new recycling proposal for the Resource Conservation and Recovery Act reauthorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CHILDREN, FAMILY, DRUGS AND ALCOHOLISM

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Children, Family, Drugs and Alcoholism of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, March 5, 1992, at 9:30 a.m., for a hearing on "Solutions for the New Economy: Jobs and Families."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, March 5, 1992, at 9:30 a.m., in open session, to receive testimony from the unified commands on their regional military strategy and operational requirements, and the amended Defense authorization request for fiscal year 1993 and the future year defense plan.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 5, at 10 a.m. to hold a hearing on "Strategic Nuclear Reductions in a Post-Cold War World."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 5, 1992, at 10 a.m. to conduct a hearing on the "Resolution Trust Corporation Operations and Its Affordable Housing Program."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Federal Services, Post Office, and Civil Service, Committee on

Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, March 5, 1992, on S. 316, Garnishment Equalization Act of 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks, and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, March 5, 1992, at 2 p.m., to receive testimony on S. 1755, a bill to reform the concessions policies of the National Park Service, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DESALINATION

• Mr. SIMON. Mr. President, Last summer, the Environment and Public Works Committee held a hearing on my bill, S. 481, the Water Research Act. The purpose of this legislation is to once again recommit the Federal Government to supporting research and development efforts with the ultimate aim of developing low-cost, affordable desalting technology.

Many times I have laid out the arguments as to why I believe this is a wise and valuable use of Government funds. An article from Engineering Times entitled, "Drought Whets Appetite for More Desalination," clearly demonstrates I am not alone in this belief. I urge my colleagues to read the article and think of all the benefits to be gained by having this technology be made more widely available.

I ask the attached article be entered into the RECORD.

The article follows:

[From Engineering Times, September 1991]

DROUGHT WHETS APPETITE FOR MORE DESALINATION

The continuing drought in the west and the search for new water in some eastern communities has Congress eyeing a renewed role for the federal government in desalination research. Legislation introduced in the House and Senate would increase funds for research and establish demonstration programs.

Federally sponsored programs in the 1950s helped lead to the newer desalination technique of reverse osmosis and to advances in distillation, an older technology. Except for participation in some scattered demonstration projects, federal support for desalination research was discontinued in 1982. "Since then, only incremental refinements have been made to the existing technology," says Rep. Rick Boucher (D-Va.), chairman of the House Subcommittee on Science.

The process of purifying salty or brackish water remains expensive. Desalting seawater generally costs $4 to $6 per 1000 gallons, while purifying brackish water can cost $1.50 to $2.50. Worldwide, the two principal desalination techniques used are multistage flash distillation (65%) and reverse osmosis (25%). Ion exchange, freezing, and electrodialysis are other methods.

IMPROVEMENTS

According to water experts, reverse osmosis could be improved with advances in membrane technology, among other things. Multistage filtration requires research and development to improve heat transfer, and upgrade the chemicals and corrosion-resistant materials involved.

A bill introduced by Sen. Paul Simon (D-Ill.) would authorize $90 million for three years of research and unspecified funds for an additional two years thereafter. It would direct the Interior Department to oversee a basic research program aimed at lowering the costs of desalination.

After three years, the Interior Department would recommend which technologies should be demonstrated. A similar bill has been introduced in the House.

In testimony before the science subcommittee, Wayne Marchant, chief of research and laboratory services at the Bureau of Reclamation, said that while the Administration supports the intent of the legislation, it was concerned with the amount and pace of funding. "It is important not to create the impression that generous funding guarantees rapid progress," said Marchant. He recommended that demonstration projects move forward at the discretion of the Secretary of the Interior.

In addition, Marchant said federal participation should be considered only when the marketplace is unable or unwilling to advance technology into commercial use. He proposed the federal government's role be one of guidance direction, and prevention of duplicate efforts.

A number of thirsty communities in California have undertaken desalination projects, including Santa Barbara and Santa Catalina Island. Santa Barbara recently approved construction of a $25-million plant that may provide 2.4 billion gallons of water per year.

In the international arena, the potential for regional conflicts stemming from water shortages points to a need for advances in desalination technology, say water experts. The Middle East has almost 60% of the world's desalination capacity.•

INTERNATIONAL PEN PALS

• Mr. WARNER. Mr. President, I would like to call the attention of my Senate colleagues to the fine work being done by the Loudoun Country Day School of Leesburg, VA, in support of International Pen Pals.

These young people are interested in corresponding with their peers around the world, and in encouraging all young Americans to become involved in this worthwhile endeavor.

In these times of remarkable change in Eastern Europe, the former Soviet Union and elsewhere, who among us does not believe in the critical importance of communication among the world's peoples?

Who doubts that when we fail to communicate, we risk dire consequences—particularly those of us who have lived through the rise of the nuclear age, and four decades of the cold war?

And who would question that, although that long superpower rivalry may have ended, the need to understand and tolerate other cultures is, if anything, greater today?

The fine art of letter-writing—like language itself—is best learned at a young age, and I commend these Loudoun Country Day School students for their interest in it.

While modern communications technology is, perhaps, a blessing, it is best for us all to practice those skills required to express ourselves by letter. This is not simply a matter of sentimentality or nostalgia among the older generation.

The telephone is fast, easy, efficient—but fleeting.

A letter, on the other hand, is deeply personal and lasting. It is an ideal means of building a bridge of understanding among people—even between individuals who have never met.

I am reminded of a phrase used by President Woodrow Wilson in Paris after World War I had ended.

Wilson said:

I have felt that quick comradeship of letters which is a very real comradeship, because it is a comradeship of thought and of principle.

Wilson was speaking of his written correspondence with Frenchmen whom, until that time, he had never met.

Today, more than 70 years later, I think Wilson's phrase—"quick comradeship"—still aptly describes the special relationship that a program such as International Pen Pals seeks to encourage.

As Wilson knew, a letter is a special and a powerful instrument that can leap geographical barriers, overcome political boundaries, and even mend damaged friendships.

Presidents Thomas Jefferson and John Adams worked hard together to win independence for this country, but partisan differences later came between them.

They remained estranged for years.

Finally, after both men had retired—Adams to Quincy, MA, and Jefferson to Monticello—they began to write letters to one another.

They covered every subject you can imagine: Gardening, horseback riding, even sneezing as a cure for hiccups. But they also touched on important, substantive issues—as President Reagan once described it, "the last thoughts, the final hopes of two old men, two great patriarchs, for the country that they had helped to found and loved so deeply."

It carries me back,

Jefferson said of this correspondence with his friend,

to the times when, beset with difficulties and dangers, we were fellow laborers in the same cause, struggling for what is most valuable to man: his right to self-government.

Mr. President, International Pen Pals is a valuable and worthwhile ex-

periment, and I wish these students from Virginia well.•

A CITIZEN OF NEW JERSEY CALLS FOR U.S.-EC COOPERATION

• Mr. BRADLEY. Mr. President. I was pleased to see a recent article by Mr. Ben Palumbo in Roll Call, our own local paper on Capitol Hill. Ben is a familiar face to most veterans of the congressional process, but he is especially well-known to those of us who represent New Jersey.

He has had a strong personal, professional, and political relationship with our State throughout his life. In addition, Mr. Palumbo has been active in the international sphere advising the delegation of the European Community in Washington on trade issues, and counseling the California Foundation on the Environment and the Economy which sponsors conferences between United States business, political and union leaders and their counterparts in the European Community.

I think this article presents some provocative views that deserve serious consideration by U.S. trade policy negotiators.

Mr. President, I ask that the text of Mr. Ben Palumbo's article appear at this point in the RECORD.

The article follows:

[From the Roll Call]

AFTER MAASTRICHT: EUROPE'S GREATER OPPORTUNITY FOR UNITED STATES

(By Benjamin L. Palumbo)

What was the meaning of the summit that the 12 nations of the European Community held in Maastricht in the Netherlands in December 1991?

The waning of nationalism? The end of ideology? Acceptance of a new international economic reality? Victory for the farsighted statesmen, from both sides of the Atlantic, who believed in a united Europe even as it lay devastated, depleted, dependent?

Symbolically, it was all of the above. And more. Imagine that the Franco-Prussian War of 1870 began a political "Ice Age" in Europe.

That it unleashed glaciers which expanded inexorably, accelerated by the two World Wars, until they blanketed Europe, leaving the continent prostrate, its politics frozen into a left-right ice mold.

But then imagine the first hint of a thaw: a tiny drop of water created by the warmth of the U.S. Marshall Plan. The drop turned into a rivulet with the formation of the European Coal and Steel Community in 1951, and by the time of the signing of the Treaty of Rome in 1957 creating the European Economic Community, the glaciers began their long retreat.

Today the Ice Age is over, and throughout Europe a new political spring is evident as the success of the Maastricht summit and the near-completion of the economic integration plan targeted for later this year attest.

Unfolding before us is one of the greatest events of our time, perhaps eclipsing the collapse of communism.

We Americans seem unable to grasp fully what has happened. Perhaps this is because it does not have the dramatic impact of the fall of the Berlin Wall, and we tend to suffer from a certain impatience with things that take time.

Also, we are still mostly an untraveled lot. Too many of our citizens haven't seen the rebirth of Europe; nor have America's media give adequate coverage to this phenomenon. To the extent we have thought at all about international relations, we have for too long been focused on the Cold War, the Middle East, and, lately, our trade problems with Japan. In fact, we seem today to be mesmerized by the Japanese challenge.

But the rise of a united Europe is an event of far greater importance to the United States than the frictions evident in our relationship with Japan.

The aggregate numbers are striking. In 1991, the flow of visitors between the U.S. and the EC was 14.1 million; between the U.S. and Japan, 4.3 million. Two-way investment between the U.S. and the EC totaled $417.9 billion; between the U.S. and Japan, $104.5 billion. Two-way trade between the U.S. and the EC was $190 billion; between the U.S. and Japan, $132 billion.

Very few Americans know we have a trade surplus with Europe, while everyone knows we have a deficit with the Japanese.

The figures cited above do not include those for the United States and the six member countries of the European Free Trade Area (EFTA): Austria, Finland, Iceland, Norway, Sweden, and Switzerland. As EFTA is on the verge of joining the single market of the EC, the imbalance is even greater. Without EFTA, the EC is big enough—340 million well-educated, highly skilled, healthy, productive people. With EFTA, we will be looking at a free market of almost 400 million people with whom our relationship has been longer, deeper, and closer than with any other part of the world; with whom our economic and trade relations have been easier; and from whom we have absorbed much of what we are in law, language, culture, and economics.

It is not Japan bashing to recall both these numbers and the depth of our European relationships. Rather, it is a summons to reality. The point is that the opportunities and the challenges for the US are greater with Europe than with Japan. And dealing with Japan's far more closed economy and anti-competitive economic arrangements may be accomplished more easily by cooperation between the US and the EC than by uncoordinated retaliatory measures.

For example, anti-trust has been rooted in our history for almost a century. The EC is now vigorously applying what it calls "competition policy" against excessive market concentrations. Our mutual interests, our deep interdependence, our shared understandings should allow us to negotiate an agreement on rules of competition for all to play by, as indeed the EC has already proposed.

Should the Japanese wish to participate, well and good. But should we agree and they opt out, the consequences would be serious. A binding agreement between the US and the EC resting on a vigorous antitrust policy would, by definition, be the rules for the richest market in the world—650 million consumers. Thus, the US/EC rules would be everyone's rules; those who ignored them would do so at great cost.

The significance of the Maastricht summit is that the ability of the EC to act and negotiate as a unit has taken a quantum leap. This is not to say that a monolith has been created. Its political and economic leaders will no more march in lock-step than do our own. But just as the effect of our Constitution was to strengthen the central government by diminishing, but not eliminating, the power states held under the old Articles of Confederation, the effect of Maastricht is similar.

The 1957 Treaty of Rome was the product of far-sighted politicians who ached to end the European cycles of war and destruction, and who pulled their business leaders along. But the single European act of 1986 which strengthened the institutions of the EC, and the establishment of the goal of a truly integrated economy by 1992, were examples of Europe's business leadership reacting to the threat of international competition and pushing their political leaders along.

What is important to us is that the competition about which they are most concerned is not American but Japanese; not because the American competition is weak, but because Europeans and Americans have a more common understanding about the rules of competition and how economic activity should take place.

The Maastricht summit reflects an enormous determination to achieve European unity. It sets goals for monetary union, and a single currency. It establishes a framework for a common foreign policy and ultimately a common defense policy. And it does all this while carefully preserving the rights of the EC's member-states through requirements for a weighed majority or unanimity on important decisions.

The skeptics have been confounded. Now the oblivious must awaken to this new European reality and seek a partnership in which we together face the world's problems.

BANK AND THRIFT DISCLOSURE ACT OF 1992

• Mr. PRYOR. Mr. President, I am proud to be an original cosponsor to the Bank and Thrift Disclosure Act of 1992 because I believe it will provide the sunshine that will help disinfect the rotten savings and loan mess which our country now faces. It is estimated that taxpayers will eventually have to spend $200 billion to clean up the S&L mess. This is an enormous amount, by anyone's standards.

This bill will require public disclosure of the regulators' examination reports on savings and loans that later failed and were sold in the 1988 deals. Also, it will prohibit the FDIC from secretly settling lawsuits arising from the failure of those institutions.

Making the examination reports of failed institutions public will provide valuable information which could help us learn how to prevent future failures. Moreover, the provisions will give regulators greater incentive to promptly correct problems they find at institutions, since the public will be able to hold them accountable for failures that could have been prevented.

By throwing open the windows and letting in the light, we can expose the S&L board members and officers who were allowed to recklessly toss money into the hands of their rich, greedy friends. Money insured by taxpayers was used to finance high risk deals. Once 1980's high times hit hard times these deals went bad and the U.S. Gov-

ernment was called in to bail them out. We can also expose the regulators who ignored tell-tale signs of shady deals and imminent failure.

The Government has sued some of the people responsible for this mess. However, all too often these lawsuits end in secret settlements for far less money than was specified in the original suit. Neither the regulator's reports nor the information surrounding the settlement is available to the public at this time. The "Bank and Thrift Disclosure Act of 1992" will remedy that situation.

Settlements can be in the best interest of the taxpayers in some cases, but as long as they are footing the bill for the cleanup, taxpayers have a right to know the details of these settlements.

American taxpayers deserve respect, that is why I have introduced the "Taxpayers Bill of Rights 2" and why I fully support disclosure of S&L examination reports. We have already passed along a great debt to our children and grandchildren. It is time we took this small but important step to bring everything into the light of day, to prevent future failtures, and to stop escalating cleanup costs.●

A POLITICAL HISTORY OF THE CIVIL WAR IN ANGOLA, 1974–1990

● Mr. PRYOR. Mr. President, recently William Martin James III, an associate professor of political science at Henderson State University in Arkadelphia, AR, announced publication of his book, "A Political History of the Civil War in Angola, 1974–1990."

This book, published by the Institute for Soviet and East European Studies at the University of Miami, focuses on the political history of Angola and the possibilities that the country can become an economic power because of its large land area and resources and small population.

Martin James holds bachelor of arts and master of arts degrees in political science from the University of Arkansas and a doctorate degree from the Catholic University here in Washington.

It has been my good fortune to know Martin James and his wife, Susie, who works in my Little Rock office, and their family for a number of years. Martin is an aggressive college professor who daily strives to instill in his students a zest for learning.

I commend Martin James first—of what I am certain will be many—book to my colleagues, to foreign policy analysts, African area specialists, and to scholars of postcolonial history.●

REFERENDUM IN BOSNIA-HERCEGOVINA

● Mr. DECONCINI. Mr. President, last weekend the Government of the Yugoslav Republic of Bosnia-Hercegovina organized a referendum in order to put to the people of that Republic the question of where their future lies—in a new Yugoslav State or as an independent and sovereign Republic.

Following a meeting I had in Washington in February with the President of Bosnia-Hercegovina, Alija Izetbegovic, Representative STENY HOYER and I—as cochairs of the Helsinki Commission—decided to accept an invitation from the Government of that Republic to send members of the Commission staff to observe the referendum. David Evans, senior adviser to the Commission, and Bob Hand, the staff member responsible for Yugoslav affairs, spent a total of about 5 days in Bosnia-Hercegovina, examining the overall political and economic situation in that Republic in addition to observing the referendum itself.

Unfortunately, during the last day of their visit, the capital of Bosnia-Hercegovina, Sarajevo, was surrounded by barricades set up by militant Serbian groups who are opposed to any separation of the Republic from the Republic of Serbia, regardless of the will of the people. These groups boycotted the referendum, and, when realizing that the results of the referendum would state clear support for independence, they decided to resort to threats and perhaps even the use of force to pressure the Government of Bosnia-Hercegovina to nullify the results.

In light of this situation, the Commission staff and other foreign observers were unable to give any preliminary report on their findings before leaving Sarajevo. Indeed, their last day in that city was spent trying to learn how they were going to be able to depart safely in light of the barricades and widespread shooting, which led to a number of deaths.

The two Commission observers nevertheless had prepared a statement for that day, March 2, written before the barricades went up. I would like to insert this statement into the RECORD, because it explains what they did, where they went, whom they met, and what they saw. Their basic conclusion is that the referendum was a legitimate expression of the will of the majority of the people of that Republic.

In the very near future, the Commission will release a full report on the referendum, how it was conducted, and its results. In the meantime, I thought it important to share these initial conclusions with my colleagues, because, while most of the barricades have been removed, tensions are still high in Bosnia-Hercegovina, and full-scale violence could erupt at any time.

The population of Bosnia-Hercegovina is extremely diverse—is has been called a Yugoslavia within Yugoslavia—and the Republic will have to find a consensus among its people on how it will now proceed. But it is important for us to realize that, no matter how one views the conflict in Yugoslavia, Bosnia-Hercegovina has in no way been its source. Instead, that Republic has been trying to deal with the realities of Yugoslavia's breakup in order to keep from becoming the conflict's bloodiest victim. The leaders of Bosnia-Hercegovina, I believe, are seeking to maintain the peace, and to establish a democratic political system in which all peoples, regardless of nationality, can live together.

Times will likely continue to be difficult for Bosnia-Hercegovina, which has no history has an independent state. It therefore deserves our full support. I can think of no better way to express this support than to respond positively to the results of the referendum and recognize the independence of Bosnia-Hercegovina. Those countries that have recognized Slovenia and Croatia should recognize Bosnia-Hercegovina as well as Macedonia, and the United States should follow suit. We should also encourage as best we can the further democratic development of that Republic, which will be essential if the main nationalities there—Moslems, Serbs, and Croats—are to find real peace with each other.

STATEMENT BY THE U.S. HELSINKI COMMISSION OBSERVERS OF THE REFERENDUM IN BOSNIA-HERCEGOVINA

SARAJEVO, March 2, 1992.—At the conclusion of their five-day visit to Bosnia-Hercegovina to observe that republic's referendum on independence, David Evans and Robert Hand, members of the staff of the U.S. Commission on Security and Cooperation in Europe (Helsinki Commission), made the following statement:

"We came to observe the referendum in Bosnia-Hercegovina at the direction of Representative STENY HOYER and Senator DENNIS DECONCINI, Co-Chairs of the Helsinki Commission, who have been deeply concerned that the senseless conflict which has tragically torn Yugoslavia apart might spread to this diverse and centrally located republic. Reports of tensions between ethnic groups in some regions of the republics, as well as of possible outside agitation of these tensions by neighboring republics, added greatly to this concern.

"Our presence here, therefore, intended to do two things: to help ensure through international observation that the referendum was conducted smoothly, freely, and openly; and to demonstrate the strong interest of the Helsinki Commission in seeing the future of Bosnia-Hercegovina beyond the referendum determined in a peaceful and democratic way. This, the Commission believes, can best be done by respecting the principles of the Helsinki Final Act, especially those relating to respect for obligations under international law; the inviolability of frontiers; non-use of force; respect for human rights and freedoms; and the equal rights and self-determination of peoples. These principles should be fully applied by the Yugoslav republics in their relations with each other, just as they are in relations between CSCE states.

"During the course of our visit, we met with political leaders at the republic and local levels who represent, combined, the interests of all three main national groups residing in Bosnia-Hercegovina. Among these

were several members of the collective presidency of the republic, the mayors of Banja Luka and Mostar and representatives of various political parties. We also held talks with members of the Office for Foreign Observers of the republic's Referendum Commission, as well as with observers from the European Community and other concerned countries. We also spoke with several private individuals, such as journalists and shopkeepers, asking them their views on the referendum and the future of Bosnia-Hercegovina. On the days of the referendum, we visited many polling stations in and around Sarajevo, Banja Luka, and Mostar, and in several towns and villages in between.

"It is, of course, much too early to draw final conclusions on this referendum and the manner in which it was conducted. We have been seeking the observations of others to add to our own, and the Commission will issue a report on our findings in Washington in the near future.

"We can, however, factually state some of the things we saw or heard while observing the referendum. Generally, the media in Bosnia-Hercegovina seems to be relatively free and open, allowing various views in the referendum to be expressed. We also felt that the referendum was properly organized and carried out by the authorities, allowing the public a free choice. We did note, however, that these conditions varied somewhat from one region of the republic to another.

"We were concerned about the impact of the call of the Serbian Democratic Party to boycott the referendum, and the refusal of some officials to cooperate in preparing for and administering the referendum. These actions may have intimidated eligible voters, especially ethnic Serbs, who may otherwise have participated in the referendum, and made it more difficult for many others who did intend to participate. Among the regions where we observed the referendum, these actions seemed to have had a particularly negative impact in and around Banja Luka. While we could not agree with the reasons for such actions, we appreciated the willingness of those supporting them to explain them to us, and we also noted their calls on their followers not to disrupt the referendum.

"Unfortunately, the period leading up to and including the days of the referendum was held was marred by violence, which included bombing and shootings, the wide-scale tearing down of posters and other intimidating public activities, which impacted negatively on the referendum. Despite these obstacles, the final result of the referendum, based on our own observations, should be considered a legitimate reflection of the will of the majority of the people of this republic.

"With the referendum now over, we hope the international community and the other Yugoslav republics will acknowledge the results and respond to them positively and in accordance with the Helsinki Principles. Recognizing that significant differences still remain within Bosnia-Hercegovina, we hope that all sides will seek solutions through constructive dialogue and democratic processes—not through confrontation and violence. We do believe that these differences can be overcome if there is, on all sides, the desire and determination to do so.

"Finally we would like to thank the Office for Foreign Observers for facilitating our visit, and Portuguese Ambassador Moriera de Andrade, who coordinated the work of the various observer delegations in a way that maximized their effectiveness. And we want to thank all the people of Bosnia-Hercegovina whom we met, who made our stay so enjoyable and informative. We wish all the people of this republic a peaceful, democratic and prosperous future. Thank you."•

THE 50TH WEDDING ANNIVERSARY OF DORIS AND PHIL BECHTEL

• Mr. D'AMATO. Mr. President, I rise today to congratulate Doris and Phil Bechtel on the occasion of their 50th wedding anniversary. This is a milestone that very few couples are able to attain. Fifty years ago today, at 7 p.m. at St. Matthew's Lutheran Church in Baltimore, MD, Doris and Phil were married. After the wedding and reception, they left on a 2 a.m. train for a 3-week honeymoon to Charleston, SC, where Phil, an Army lieutenant, was stationed before going to the Pacific. This Saturday, March 7, Doris, known as Lubby, and Phil will be celebrating this memorable occasion with their family and friends at the Johns Hopkins University Club in Baltimore, MD.

March 1942 was a very dark and uncertain time for the young people of our country. We had recently been shocked by the Japanese sneak attack on Pearl Harbor, and we were engaged in global war against massive totalitarian forces. Our young people, such as Doris and Phil, needed a great deal of courage and faith to start a life together, but they had this, and were successful.

I am especially glad that they did, since their son Phil, is my legislative director, and their daughter-in-law Anne Miano, works on the Senate Appropriations Committee. Doris and Phil are fortunate to have another son, Jim, and his wife Peggy, who live on Maryland's Eastern Shore, and are the proud grandparents of Laura Ann, age 9, Emily Louise, almost 3, and Matthew Edward, 16 months.

Once again, congratulations and best wishes to the Bechtels, their family and friends.•

TRIBUTE TO LEO V. DONOHUE AND HENRY J. BECKER, JR.

• Mr. LIEBERMAN. Mr. President, today the friends of Leo V. Donohue and Henry J. Becker, Jr., will be gathering at Capra's Restaurant in Newington, CT, to honor the pair's quarter century of service to the people of our great State.

Leo and Henry, a Democrat and a Republican, respectively, were Connecticut's State auditors for the past 25 years. They came into State government on the same day, July 1, 1967, and they retired together last Friday, February 28. During those years, the two compiled a record of tremendous accomplishment. Oftentimes they were a thorn in the side of agency heads, Governors, and other public officials. But the pain for them usually spelled relief for the State's taxpayers. With sharp pencils, calculators, and a keen eye for inefficient, improper, or illegal behavior, Leo and Henry scrutinized virtually every nook and cranny of State government and issued detailed, public reports about what was wrong, and what should be done to correct it.

It is probably impossible to calculate how much money Leo Donohue and Henry Becker saved the taxpayers of Connecticut by exposing waste, fraud, and abuse, but it is fair to say that if they had been paid on a percentage basis, they would both be multimillionaires today. From keeping an eye on no-show employees to tracing Federal dollars inappropriately spent on water coolers, Leo and Henry have been the eyes and ears for the public, shedding light on hidden problems and urging traditionally slow bureaucracies to move quickly to fix what's broken.

Mr. President, negative stories about State employees are legion in newspapers and on radio and television these days. Some criticism is certainly deserved, but by and large State employees are decent, hard-working people who labor anonymously for the public good. To those who are skeptical about government workers, I hold up the example of Leo V. Donohue and Henry J. Becker, Jr., as examples of what is truly good about public service and the people engaged in our profession.

Working hard, without the fanfare many public officials enjoy, Leo and Henry simply did their jobs, and did them better than anyone could have expected.

Mr. President, at this point in the RECORD, I would like to insert an excellent profile of Leo Donohue and Henry Becker that was published by Lisa Marie Pane of the Associated Press on February 24.

The profile follows:

NATION'S ONLY AUDITING DUO BALANCED POLITICS WITH NUMBER CRUNCHING

(By Lisa Marie Pane)

HARTFORD, CT.—If a television show were made about Connecticut's two state auditors, Leo V. Donohue and Henry J. Becker Jr. could play one's Joe Friday to the other's Bill Gannon: purveyors of truth in government who went after "just the facts."

For a quarter century, the nation's only auditing duo snared bad guys in their dragnet of fiscal probes.

They caught a governor using federal money to buy water coolers. They nailed a state treasurer for allowing his wife and daughter to bill thousands of dollars to his state telephone credit card.

They uncovered evidence that the head veterans official had used state money to buy a waterbed, bar stools and other furnishings for his home and then watched when he resigned in disgrace.

They nailed a deputy commissioner at the Department of Motor Vehicles for failing to show up for work for long stretches at a time, thanks to an eagle-eyed staff auditor who noticed the guy's parking space was always empty.

But never, it seemed, did this Democrat-and-Republican team allow political leanings

to get in the way of their jobs. No one was spared their scrutiny.

Yes, ma'am. Just the facts, ma'am.

Leo and Henry. Henry and Leo. Few talk about one without mentioning the other in the same sentence.

Donohue's wiry with a shock of gray hair; Becker is stocky with baby-fine hair that is slicked back and thinning. Both live in Avon. They started the same day July 1, 1967. And now they're retiring together, on Friday.

Their doors were always open to reporters and politicians, alike. Even the door between their two attached offices has always been open, so Donohue can see Becker, and Becker can see Donohue.

They've been separated just once in that time for two years when Donohue became the state's finance director for Gov. John Dempsey.

Connecticut is the only state in the nation that appoints two state auditors, one a Republican and the other a Democrat, to look over the books.

Becker and Donohue say an accounting background is helpful. But political insight, knowledge of the inner workings of government and a sleuth's curiosity about seemingly inconsequential details like virgin snow covering a deputy commissioner's parking space are the real keys to doing the job right.

"You don't just look at the numbers," Donohue said.

Donohue, 67, the Democratic member of the combo who is noted for his dry wit and sense of the one-liner, once quipped: "My wife calls us Goody Four Shoes. We walk softly and carry a big pencil."

Becker, a 63-year-old Republican and the more serious and reserved of the two with a fondness for American history, once framed the motto: "Old auditors never die. They just become unbalanced."

They've scored a few victories during their tenure as Connecticut's two top financial watchdogs. And along the way, they've had their share of very public and very heated run-ins with state officials from governor on down.

Gov. Ella T. Grasso, a Democrat who served from 1975 to 1980, was once criticized by the auditors for using federal money to buy water coolers. She would grow exasperated by their meticulous and unflagging quest for financial truth.

"Anytime I see you two, it's trouble," Grasso used to say.

"She did not graciously accept criticism," Donohue said recently.

Becker hasn't had it easy with members of his party either.

There's been a Republican governor just four years in the time Becker has served. And that one, former Gov. Thomas J. Meskill, now a federal judge, never seemed pleased with his fellow Republican from the start.

Meskill had campaigned on a platform calling for the auditors duties to be expanded from financial audits to both financial and performance audits. Then, when he became governor, he vetoed legislation that would've done just that.

Becker didn't hide his displeasure. "I publicly said the Democrats ignored this for years and now he didn't want it either," Becker recalled.

"From that point on, things were pretty cool," he said.

If Donohue and Becker consistently won over one group, it was the Capitol press corps.

"Henry was never too fond of Meskill. Leo called it as it was right through the Democrats," says James Mutrie Jr., a retired Capitol reporter who has known the two for decades.

The pair rarely, if ever, independently tipped off reporters to scandals in state government. But even before state freedom of information laws were enacted, Becker and Donohue never denied the media access to their public records. And, when asked about one indiscretion or another, both were candid in their remarks.

They found the media helpful in applying pressure to errant officials.

In the early 1970s, they issued a report critical of the Department of Children and Youth Services. But they never heard back from the commissioner until six months later when a newspaper reporter wrote about it.

The article was out on the newsstands at noon. "By 1:30 we had a response," Donohue said.

"We only have the power to recommend," Becker explained.

It's the media who can help push their cause. But Becker's and Donohue's frankness often sparked bitter battles with the latest public official whose questionable conduct was aired in the press.

The pair's run-ins with former Treasurer Henry E. Parker were especially notorious.

Parker a Democrat whose wife and daughter were found to have used his state telephone credit card to bill more than $2,000 worth of calls, and who also was criticized for proposing legislation that some said would guarantee state jobs to political appointees even after he left state government once fired off a scathing, four-page letter to Becker.

"With you, there always seems to be two levels of communication. There is, on the one hand, the high sounding rhetoric of helpfulness and concern contained in your official correspondence and reports; then there is your character assassination approach in 'soul baring' sessions you have exhibited with selective members of the news media," Parker wrote.

Later, Parker was much more complimentary.

"It's a comfort to me that they are there," Parker was once quoted as saying.

Connecticut has had an auditors' office since the 1600s. The dual-party positions were created in 1702. Most other states appoint or elect just one auditor, where often the office is subjected to attacks that partisanship is the chief motivator.

Becker and Donohue are credited with being fair and with ushering their office of 80 staff auditors into modern times.

"They have created that institution," said Lorraine M. Aronson, the former welfare commissioner and now the governor's deputy budget director. "I've had good audits and bad audits from them and never once did I think I was not treated fairly."

Donohue, who has an accounting degree, first joined state government in 1945 when he was a 20-year-old kid fresh out of the Army. He had never gotten a driver's license until the day he was offered a job as a driver with the Department of Motor Vehicles.

Along the way, he's been a state budget examiner, and an advisor to governors and top political leaders.

Becker, whose educational background is in public administration, has worked for the state for more than 30 years, starting with the former Highway Department. He also worked for the Greater Hartford Chamber of Commerce and the Connecticut Public Expenditures Council.

They are both fonts of knowledge about the political characters who have made their way through Connecticut government history.

"This was a splendid marriage that honors everything good with state government and public service," says Charles F.J. Morse, a former Capitol reporter and now an aide to Gov. Lowell P. Weicker Jr.

So far, the pair hasn't had any confrontations with the often-combative Weicker, a Republican-since turned-independent whom both knew when he was a freshman state legislator in 1963.

"I'm sure at some point in four years, if we were here, we would run into some problems because we've certainly had them with every other governor," Becker said.

So any parting advice for their successors, whoever they may be from the scads of politicians who are clamoring for the post?

The duo who gave state officials advice for decades whether they wanted it or not were uncharacteristically reserved.

"Only if they ask for it," Donohue said.

"Yeah," Becker said.•

RECOGNIZING THE APPOINTMENT OF GREGORY L. HERSHBERGER

• Mr. D'AMATO. Mr. President, I rise today to note the appointment of Gregory L. Hershberger as the first warden of the Metropolitan Detention Center [MDC] in Brooklyn, NY. Greg has been a career Bureau employee for 14 years and brings outstanding leadership experience to his new assignment.

Mr. Hershberger was born in Lincoln, NE, in 1949. He holds a bachelor's degree in sociology from the University of Nebraska (1971) and a master's degree in criminal justice from Washington State University (1978). He has held previous Bureau of Prisons assignments, at MCC Chicago, ILL; USP Terra Haute, IN; Central Office, Washington, DC, associate warden, FCI El Reno, OK; and warden, FCI Otisville, NY. Prior to joining the Bureau of Prisons, he was a Nebraska State probation officer.

Gregory Hershberger has had an outstanding career with the Federal Bureau of prisons and I commend him on his new appointment.•

HATE CRIMES

• Mr. SIMON. Mr. President, in 1990, I sponsored the Hate Crimes Statistics Act, which required the Attorney General to systematically collect hate crime statistics that will provide information on trends and help us to better predict and prevent such unconscionable acts. Hatred based on race, religion, ethnic background, and sexual orientation seems to be growing. Over the next few months, I intend to speak out often on this subject, bringing to the Senate's attention a few of the tragic incidents of serious concern to us all.

Today, I rise to address specifically the murder of Yasuo Kato, a Japanese

businessman in Camarillo, CA. Mr. Kato was stabbed to death in his garage with an 8-inch hunting knife on February 24, just over a week ago, as he was unloading groceries from his car. Two weeks earlier, an unidentified white male had confronted Mr. Kato in his own home, demanding money and blaming Japan for the recession and for the loss of his job. According to the victim's son, Toshiyuki Kato, as the man left he screamed, "I'm going to kill you. I'm going to get you. I know where you live." The victim was a martial arts champion who once had instructed Japanese police cadets. Yet, he died without any signs of attempting to defend himself.

This incident reminds us of the case of Vincent Chin, a Chinese-American, who was beaten to death with baseball bats by two unemployed auto workers in Detroit in the early 1980's. The reason for Mr. Chin's violent death was also the belief by the killers that he was Japanese and had somehow caused their unemployment. Fears have been voiced in the past few weeks that current anti-Japanese rhetoric based upon trade friction might encourage similar crimes now. With Yasuo Kato's death, that prediction may have been tragically fulfilled.

Mr. President, I believe that hate crimes are increasing due to the uncertainty and fear many people have concerning our economy. In this climate, Japan bashing becomes extremely tempting to many who aspire to leadership in this country. As the U.S. Commission on Civil Rights concluded, in a report issued just last week, political leaders have done little to diffuse escalating racial tensions, and some political candidates have even exacerbated racial tensions by using racial rhetoric in their campaigns. Politicians exploit our economic fears by pointing the finger at people who can be easily distinguished because they look different and speak a different language than most Americans. Business leaders take advantage of these fears by blaming others for our problems. This is racial scape-goating of the worst kind. It is coming from Democrats and Republicans; from those who are considered liberal and those who are considered conservative. In this atmosphere, racial violence can almost be expected. And Asian-Americans will bear the brunt of the resentment that we create.

How many even remember the name or position of the Japanese Government official who criticized American workers? His remarks were ill-advised, but they do not justify making an entire race responsible for maligning Americans. When a British company bought Holiday Inn, "America's Innkeeper", did we worry that America was being bought up by the British? British investments in the United States continue to be far greater than Japanese investments. When Canadian Robert Campeau drove Bloomingdale's into bankruptcy, did we complain about those "sneaky foreigners" from the North? No; but somehow, when the blame is pointed at someone of a different color, it is all too easy to generalize and create resentment against the entire race. That is what is happening with Asians, and we must do our best to bring it to a halt.

Already, Japanese-American community centers have been attacked and vandalized. Asian-American community leaders say that the general hostility toward Asians is the worst that it has been in decades. People have been spit on in the streets, and hurtful epithets yelled across the street, over the phone, and into answering machines. And in Los Angeles, Japanese-American Girl Scouts selling their cookies outside a supermarket were rejected by a man who told them: "I only buy from American girls."

Racial scape-goating only increases resentment and fear. It brings out the worst in all of us. Mr. President, this problem is not going to go away. Japan is going to remain our economic competitor for many years to come. We must learn to deal with Japan not as one people against another people, but as one country's government dealing with another country's government. When Yasuo Kato died, all of America may have been victimized. No one in America should have to fear harm simply because of his race or national origin. If we are not more careful with what we say, the United States will become not a kinder, gentler place, but a more frightening and more dangerous one.•

THE 100TH ANNIVERSARY OF ST. ADALBERT'S CHURCH

• Mr. D'AMATO. Mr. President, it is with great pleasure that I announce to you the 100th anniversary of St. Adalbert's Parish, in Queens County, NY.

St. Adalbert's was founded as a parish in November 1892 by a small group of Polish immigrants seeking the "American dream." The reason for the founding of this parish, at least at the beginning, was to respond to the needs of the Polish-speaking people of Elmhurst, Maspeth, and the surrounding areas. In 1896, the Conventional Franciscan Friars were asked by the bishop to administer the parish and have been doing so ever since.

Today St. Adalbert's parish is a veritable melting pot of culture, ethnic diversity, and deep-rooted Catholic beliefs in God and country. St. Adalbert's ministers to a very changing neighborhood of Polish, Irish, Italian, Korean, Filipino, and other Asian extractions.

St. Adalbert's will be celebrating their centenary for the whole year of 1992. The celebration will culminate in a special ceremony held for the parish-community on Sunday, November 15, 1992, to note the importance of this anniversary to the people of Queens.

It is because of the commitment of the Franciscan Friars and of each member of the congregation that the warm glow of God's love has been welcomed to the city of Elmhurst. Churches, in serving the needs of our communities, protecting family values, and sharing the message of the Lord, provide each of us with a foundation of strength and spirit in these trying times. As a U.S. Senator, I commend the entire congregation for their dedication to the goals and aspirations of St. Adalbert's Parish.

I salute St. Adalbert's Roman Catholic Church, indeed the entire parish, for their many years of success in service to their community. Congratulations on your 100 years and I wish you many more years of continued success and prosperity.•

BUILDING A COMPETITIVE U.S. AUTO INDUSTRY

• Mr. BAUCUS. Mr. President, a GM CEO once said, "what's good for GM is good for America." If what is bad for GM is bad for America, our country is hurting.

Last week, GM announced the closing of 12 factories, the first step of a plan that will leave 74,000 American autoworkers unemployed. It is estimated that GM's 1991 North American auto operations lost $1 million an hour.

Ford and Chrysler also suffered record losses.

The American automobile industry is emblematic of a broader crisis in our Nation: In sector after sector, we are losing our competitive edge.

AMERICA'S COMPETITIVE DECLINE

In the fifties and sixties, American-made automobiles, steel, and electronic products set the standard for the rest of the world. But by the early eighties, those standards were set by German cars, Korean steel, and Japanese electronics products.

But instead of improving quality, many industries sought protection from imports. For the most part, the import protection the Government handed out to industries such as textiles, steel, machine tools, and autos, only raised the prices paid by consumers and allowed the executives of uncompetitive industries to line their pockets.

When the protection expired, the industries were no more competitive and they only demanded more protection at consumer expense.

But the burden of improving U.S. competitiveness should not fall entirely on industry. The Government must also find a better way to do its job.

THE HARLEY DAVIDSON EXPERIENCE

I think we can. And the experience of Harley Davidson proves import relief

can promote competitiveness and not reward laziness. Harley's motorcycles had been famous worldwide . The company had learned how to make a lot of bikes, but by the seventies they had forgotten how to make them the best.

Harley took two major steps to reverse its misfortunes. First, it sought import protection, and second, it focused on quality control and employee training.

You know the rest. Harley got import relief in the form of higher tariffs. It used the breathing room the tariffs provided to overhaul its operation. It revamped its management, and started building motorcycles people wanted again, motorcycles people trusted again. And Harley Davidson actually ended up urging the Government to end import protection ahead of schedule.

We have learned enough to know that industry requests will come and that some will be politically impossible to resist. But we can turn necessity into virtue by requiring competitive improvements in return for import relief. Given budget constraints, conditioned import relief is one of the few tools the U.S. Government can use to promote competitiveness.

We must keep in mind that when an industry comes to the Government asking for protection, it is really asking for billions of dollars out of consumers pockets.

In the future, if a U.S. industry requests import protection, we must demand that the industry invest in improving its competitiveness in exchange. If the industry is not willing to make that investment, the request for protection should be denied.

THE AUTO EXAMPLE

The American industry that is now most actively seeking protection is the auto industry. Hit by the double whammy of the recession and Japanese competition, Detroit is reeling.

The auto industry is an important part of our economy. According to recent estimates, the auto industry is responsible for 4.5 percent of U.S. GNP and more than 2 million American jobs. The impact of the auto industry stretches beyond Detroit. The American auto industry supports industries ranging from electronics to steel.

But, as we all know, the auto industry has been experiencing competitive problems. The Japanese share of the U.S. auto market has steadily risen since the 1960's. Today, if the sales to U.S. rental car fleets are excluded, the Big Three hold only about a 60-percent share of the U.S. auto market.

And—although they have succeeded in selling cars in Europe and around the world—the Big Three have not been able to crack the Japanese market in return.

Part of the fault is their own. If the Big Three want to sell cars in Japan, they will have to work at it and build cars tailored to Japanese consumers. But even when we have products Japanese consumers want to buy, like the Jeep Cherokee, an array of Japanese nontariff barriers has kept United States automakers from making the sale.

In short, the playing field is still not level. The American auto industry is certainly not a basket case. On a level playing field, it is beginning to show some real competitive muscle.

Perhaps, with a few years of import protection, the Big Three could once again set the standard for the world to meet and save millions of American jobs in the process.

A NEW PLAN FOR AUTOS

Toward that end, I have unveiled a plan—which I intend to introduce as legislation—to improve the competitiveness of the American auto industry.

The proposal is built around the simple concept of short-term import relief in return for a commitment to build a more competitive industry.

First, my proposal establishes a standstill on Japan's current United States sales level. It would limit Japan's share of the United States vehicle market to the current level of imports from Japan, approximately 2 million units, plus the current level of Japanese transplant production. That means roughly 3.6 million units annually. Transplant autos with 70 percent or greater local content won't be counted against the limit.

These limits would be reviewed every 2 years and would be in place for no more than 7 years.

But these years should be used as a chance to catch up with the competition, and not some loophole for continued business-as-used-to-be. My proposal, in return for import protection, requires that the Big Three truly make quality Job 1 throughout the industry.

I will demand that the auto industry demonstrate continued increases in production efficiency, product quality, and customer service—the criteria set by the Commerce Department for awarding the Malcolm Baldrige National Quality Award. The emphasis will be on results—building better cars.

Every 2 years, the International Trade Commission will evaluate the auto industry against these standards. If quality isn't steadily increasing, the protection will be terminated.

In order to meet these tough standards and build better cars, the auto industry must continue to reinvest in their production facilities, worker training, and research and development. But the focus will be on results, not on micromanaging the auto industry. The Big Three themselves will make the specific investment decisions.

Further, if the Big Three want temporary import relief, they will have to scale executive compensation to a level more in line with industrial reality than with major league baseball. Auto executives cannot expect to collect obscene salaries while they lay off U.S. autoworkers.

These are realistic measures. They are not mandatory. If the American auto industry believes it can turn itself around without further import restraints, that is fine. More power to them. But if import restraints are to be imposed, major continuing improvement is the price.

CONCLUSION

No one should doubt the talent or tenacity of the United States. Thirty years ago, JOHN GLENN became the first American to orbit the Earth. And less than a decade later, it was an American astronaut, not a Soviet cosmonaut, who took the first walk on the Moon. America won the technology race.

And we can win the economic race. We can bring the determination we brought to the space race to the challenge of building a competitive economy.

We do not have to beat our chests or raise our voices. We just have to do the job, and do it better than we ever have before.

And we have to do it right now.

And if U.S. industries come looking for a free ride at consumers expense, I will stand in their way. We cannot afford any more free rides for the auto industry, the steel industry, or anyone else.

From now on, the price for Government protection has got to be building a more competitive industry. Working together, Government and industry can build a more competitive America.•

OUTSTANDING HIGH SCHOOL SENIORS 1992

• Mr. D'AMATO. Mr. President, today I rise to pay tribute to the outstanding academic performances of Kimberly Hamlin and Rebecca Gleason. Each has been selected 1992 Shell Century Three Leaders which recognizes America's best and brightest student leaders.

In addition to her classroom achievements at West Genesee High School in Camillus, Miss Hamlin has displayed leadership in a range of activities. She is president of the student council and cocaptain of the varsity tennis team. She is also a member of Students Against Driving Drunk, the ski club, the school orchestra, and is an editor of the school newspaper. She is a National Merit scholar.

In her community, Hamlin has volunteered for St. Camillus and the Maxwell Memorial Library, and is active in her church youth group.

"To * * * help ease racial and gender strife it is imperative that we instill in our children an appreciation for all cultures and a thirst for unbiased knowledge. Law makers and leaders in society should encourage and enforce this

approach to learning," wrote Hamlin in her projection for innovative leadership.

Miss Gleason also excels beyond the classroom at Cohoes High School in Cohoes. She participates in numerous academic and athletic organizations. She is editor of the yearbook, president of the Spanish club, and was most valuable player on the varsity basketball team her junior year.

In her community, Gleason is a member of Explorers Post 647 and participates on a substance abuse task force. She is active in her church youth group.

"The American attitude needs to make academic excellence a priority. Children learn from their surroundings. We must stop giving them pro athletes to admire and give them teachers to respect," wrote Gleason in her projection for innovative leadership.

As corecipients of a $1,500 college scholarship, Miss Hamlin and Miss Gleason win an all-expense-paid trip to Shell Century Three Leaders national conference in colonial Williamsburg, VA, March 21–25. Along with the other national scholarship winners, they will analyze and offer solutions to issues confronting America in the next century. They will also compete for a $10,000 college scholarship.

I ask that my colleagues join me in congratulating Kimberly and Rebecca for their accomplishments and with them the best of luck as future leaders of America.●

ORDERS FOR FRIDAY, MARCH 6, AND TUESDAY, MARCH 10, 1992

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. on Friday, March 6; that on Friday, the Senate meet in pro forma session only; that at the close of the pro forma session, the Senate stand in recess until 9:30 a.m. on Tuesday, March 10; that following the prayer, the Journal of proceedings be approved to date; that following the time for the two leaders, there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each and with Senator HATFIELD recognized for up to 5 minutes; that at 10 a.m. on Tuesday, the Senate proceed to the consideration of Calendar No. 303, S. 792, a bill to reauthorize the Indoor Radon Abatement Act of 1988, and that the bill be considered under the following limitations: that the only amendments in order, other than the committee-reported substitute, be the following, that they be first-degree amendments except where noted and considered under the time limits specified:

A Burdick technical amendment, 5 minutes;

A Smith amendment regarding radon, 10 minutes;

A Wallop amendment regarding public health effects and a Wallop amendment regarding radon in public schools; that the two Wallop amendments be subject to relevant second-degree amendments; that there be 30 minutes for debate on the bill and committee substitute, inclusive; that the time be equally divided and controlled in the usual form.

I further ask unanimous consent that on Tuesday, the Senate stand in recess from 12:30 p.m. until 2:15 p.m. in order to accommodate the respective party conferences; that upon disposition of S. 792, or no later than 3 p.m., and without intervening action or debate, the Senate proceed to the consideration of H.R. 4210, a bill to provide tax relief for American families; further, that no call for the regular order displace H.R. 4210.

I further ask unanimous consent that immediately following disposition of H.R. 4210, without any intervening action or debate, the Senate proceed to vote on the motion to invoke cloture on the conference report on H.R. 3371, the Omnibus Crime Control Act; and that, if cloture is not invoked, the conference report be displaced; following the granting of this request I shall send the cloture motion to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That at 10:00 a.m. on Tuesday, March 10, 1992, the Senate proceed to the consideration of S. 792, a bill to reauthorize the Indoor Radon Abatement Act of 1988, with the only amendments in order, other than the committee-reported substitute, to be the following, that they be first degree amendments, except where noted, and considered under the time limitations specified:

Burdick, technical amendment, 5 minutes;

Smith, amendment regarding radon, 10 minutes;

Wallop, amendment regarding Public Health effects; and

Wallop, amendment regarding radon in public schools.

Ordered further, That the 2 Wallop amendments be subject to relevant second degree amendments.

Ordered further, That there be 30 minutes for debate on the bill and committee substitute, inclusive, with the time to be equally divided and controlled in the usual form.

Ordered further, That upon disposition of S. 792, or no later than 3:00 p.m. on Tuesday, March 10, 1992, and without intervening action or debate, the Senate proceed to the consideration of H.R. 4210, a bill to provide tax relief for American families.

Ordered further, That on Tuesday, March 10, 1992, the consideration of H.R. 4210 be for debate only, with no amendments or votes thereon in order.

Ordered further, That at 10:00 a.m. on Wednesday, March 11, 1992, when the Senate resumes consideration of H.R. 4210, the Senator from Arkansas (Mr. Pryor) be recognized to offer an amendment relative to prescription drugs.

Ordered further, That no call for the regular order displace H.R. 4210.

Ordered further, That immediately following disposition of H.R. 4210, and without any intervening action or debate, the Senate proceed to vote on the motion to invoke cloture on the conference report on H.R. 3371, the Omnibus Crime Control Act, and if cloture is not invoked, the conference report be displaced.

ORDERS FOR WEDNESDAY, MARCH 11, 1992

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business on Tuesday, it stand in recess until 9:30 a.m. on Wednesday, March 11; that following the prayer, the Journal of proceedings be deemed approved to date; that following the time for the two leaders there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator SIMPSON, or his designee, recognized for up to 5 minutes; that at 10 a.m., the Senate resume consideration of H.R. 4210, and that Senator PRYOR be recognized to offer an amendment relative to prescription drugs.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. MITCHELL. Mr. President and Members of the Senate, I would like now to review the effects of the agreement which has just been reached, and in the process advise Senators of the schedule of the next several days so that Senators can plan accordingly.

There will be only a pro forma session of the Senate tomorrow with no rollcall votes. The Senate will not be in session on Monday.

On Tuesday, at 10 a.m., the Senate will take up the radon bill under an agreement limiting the number of amendments to four, two of which have already been agreed to, and I understand that of the remaining two, one is likely to be agreed to.

Although there is no time limitation on those amendments, it is my hope and expectation that the Senate will complete action on that measure prior to the recess of the Senate for the party conferences at 12:30 on Tuesday and that the votes—and it now appears there will be two votes, one on an amendment and one on final passage, possibly three if a second-degree amendment is offered—will occur after the party caucuses.

So Senators should be aware that there is the likelihood of votes occurring on Tuesday, immediately after the party caucuses, with respect to the radon bill.

As soon as that bill is disposed of, or in any event no later than 3 p.m., the Senate will turn to the tax bill, H.R. 4210, as recently reported by the Senate Finance Committee.

There will be debate only on that bill on Tuesday. There will be no votes on

the tax bill and no amendments will be offered on that day.

Several Senators have requested the opportunity to speak on the tax bill. They should be prepared to do so from 3 p.m. on Tuesday throughout that day.

At 10 a.m. on Wednesday, the Senate will return to consideration of the tax bill, and amendments will then be in order, and under the agreement Senator PRYOR will be recognized to offer his amendment.

We anticipate that there will continue to be debate and votes on Wednesday and Thursday and, if necessary, on Friday to complete action on the tax bill.

Senators should be prepared for sessions late into the evening, and for as long as it takes to finish the tax bill next week. It is our intention that we will complete action on the tax bill next week whatever that takes in terms of the Senate's being in session, late in the evening, Friday if necessary, and Friday evening if necessary.

When we complete action on the tax bill, immediately thereafter and without any intervening action or debate, we will then have a cloture vote on the conference report on the Omnibus Crime Control Act which has been the subject of debate in the Senate for the past 2 days.

That will complete the action that is contemplated pursuant to this agreement.

Mr. President, I thank the distinguished Republican leader for his cooperation in working out this agreement. And I now yield to invite any comments he may wish to make on the matter.

Mr. DOLE. As I understand, following action on the conference report, if cloture is not invoked, then we would be back on the Corporation for Public Broadcasting bill.

Mr. MITCHELL. That is correct, unless for some reason the radon bill is not completed prior to 3 p.m. on Tuesday, then we would be back to finish radon, and then go to the Corporation for Public Broadcasting bill.

Mr. DOLE. Second, I know Senator PRYOR, according to the agreement, will lay down the first amendment on Wednesday morning. It may be that the Senator from Oregon [Mr. PACKWOOD] may want to make a statement. I am certain he can work that out with Senator PRYOR.

Mr. MITCHELL. I am certain there will be no problem. Senator BENTSEN will manage the bill. Senator PRYOR will be debating his amendment. And I feel certain, although I have not discussed this with either of them, that they will be prepared to accommodate Senator PACKWOOD in that regard.

Mr. DOLE. Senator PACKWOOD will be managing the bill on this side. So we are ready to go.

Mr. MITCHELL. Mr. President, I again thank my colleague.

Senators, I repeat so there can be no misunderstanding about this, should be prepared for late night sessions every night next week from Tuesday on, and to stay in session for as long as it takes to complete action on the tax bill, and have the cloture vote on the crime conference report.

MODIFICATION TO THE UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that the agreement be modified to provide within the agreement that the consideration of the tax bill on Tuesday be for debate only, that no amendments be in order at that time, and that no votes occur with respect to the tax bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 11 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There been no objection, the Senate, at 7:19 p.m., recessed until tomorrow, Friday, March 6, 1992, at 11 a.m.